

IN THE
District Court of the United States,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

THE UNITED STATES OF AMERICA,
PETITIONER,

VS.

MOTION PICTURE PATENTS COM-
PANY et al., DEFENDANTS.

RECORD---VOLUME V.

TESTIMONY OF WITNESSES FOR THE
DEFENDANTS.

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UNITED STATES OF AMERICA

V.

MOTION PICTURE PATENTS CO. ET AL.

RECORD—VOLUME V.

TESTIMONY OF WITNESSES FOR THE DEFENDANTS.

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Volume V.

1

FRED C. AIKEN, recalled for cross examination, deposed as follows:

Cross examination by Mr. GROSVENOR:

Q. Mr. Aiken, what is your position with the General Film Company? A. Special representative.

Q. Does that rank ahead of the branch manager? A. Well, I have supervision over the branch managers in my territory.

Q. That is, you have four or five districts headed by branch managers under your supervision? A. Yes, sir.

Q. Who is your immediate superior? A. Well, the general manager, the President and general manager at the home office.

Q. Who is the general manager at the home office? A. Mr. F. L. Dyer.

Q. Is your title supervisor? A. No, sir. Special representative.

Q. How many special representatives are there? A. At the present time there is one in the United States and one in Canada.

Q. That is, you are the only special representative in the United States? A. Yes, sir. At the present time.

Q. The Film Service Association was formed in the latter part of 1907, wasn't it? A. Yes, sir. The first meeting.

Q. That is, it was in November or December— A. I think it was in November, at Pittsburgh.

Q. Nineteen hundred and seven? A. Yes.

Q. I want to read to you, Mr. Aiken, some answers you gave on direct examination, page 2331, Volume IV:

“Q. I think you have stated that your exchange was a member of the Film Service Association? A. Yes, sir.

“Q. Did you take any part in the formation of that Association? A. Yes, sir.

“Q. How active were you in it? A. I was Vice-President of the Film Service Association up until January, 1909.

“Q. Were you a member of the Executive Committee? A. Yes, sir.

1 "Q. Did you take any part in the preparation of the by-laws of that Association? A. I did.

"Q. What part did you take? A. One of the Executive Committee.

"Q. By whom were the by-laws framed? A. It was framed by the Executive Committee.

"Q. And did you actively assist in the preparation of those by-laws? A. I did.

"Q. Were the manufacturers members of that Association? A. No, sir.

2 "Q. Do you know whether the manufacturers had any voice in the preparation of those by-laws? A. They did not, to my knowledge.

"Q. Were the by-laws submitted to the manufacturers or any of them before their adoption? A. They were not, to my knowledge.

"Q. Then the by-laws were voluntary self-imposed regulations? A. Yes, sir."

Is there anything you care to add to those answers and that testimony, or any qualification you desire now to make? A. No, sir. That is as I remember it, exactly.

3 Q. Mr. Aiken, you stated this afternoon, I think, that the Film Service Association was organized in Pittsburgh, in November, 1907? A. The first meeting was called there.

Q. Now, I show you Volume I of the Moving Picture World, at page 592, being an advertisement headed "Convention of Manufacturers and Film Renters," signed, "Committee, J. Stuart Blackton, of the Vitagraph Company of America; J. W. Ullman, of Italian Cines," this being printed in the issue of the Moving Picture World of November 16th, 1907. Please read that advertisement. A. Yes, sir, I remember that.

4 Q. That was an advertisement inviting the various rental exchanges to appear at Pittsburgh, November 16th, 1907, and hold a convention; is that right? A. Yes, that is right.

Q. And that advertisement is signed by twelve manufacturers? A. Yes, sir.

Mr. GROSVENOR: I request that that advertisement be copied in the record at this point.

Mr. CALDWELL: I object to that being received in

evidence, on the ground that it is wholly immaterial, and on the further ground that it unnecessarily encumbers the record. 1

Mr. GROSVENOR: The purpose of introducing this and subsequent extracts from these trade papers is to impeach and discredit the testimony given by this witness on direct examination.

Mr. KINGSLEY: I object to it as incompetent, immaterial and irrelevant; not binding upon any of the defendants, not properly proven, and hearsay.

Mr. GROSVENOR: And particularly the questions and answers which were read to the witness at the beginning of the cross examination. 2

Mr. CALDWELL: And if that is the purpose of the offer, to discredit the witness, I object to it on the further ground that it does not even remotely discredit him.

Mr. GROSVENOR: This being simply part of the general testimony along the same lines which is to be introduced, and forming the first step.

Mr. KINGSLEY: I object to the admission of this extract for the purpose of discrediting the witness, on the ground that it does not appear to be a declaration of the witness, or anything with which he was remotely connected, or for which he was responsible in any way, and as not binding on him, and having no probative force, with respect to impeaching his evidence. 3

The same is marked "Petitioner's Exhibit No. 252," and is as follows:

Petitioner's Exhibit No. 252.

CONVENTION OF MANUFACTURERS AND FILM RENTERS. 4

Gentlemen,

In response to the many letters and queries recently received by manufacturers of moving picture films regarding the present and future of the Moving Picture Industry, the undersigned Manufacturers and Importers have decided to hold a convention on Saturday and Sunday, November 16 and 17, 1907.

1

PITTSBURG, PA.,

has been chosen on account of its central location.

A cordial invitation is extended to the leading Film Rental Bureaus to be present on this occasion in order to discuss matters of vital importance for the regulation and improvement of existing business conditions.

Kindly notify any of the following by mail, telephone or telegraph of your acceptance. A committee will meet you or your representative on Saturday morning at the Ft. Pitt Hotel, Pittsburg.

2

American Biograph Co.
Edison Mfg. Co.
Essanay Film Co.
Kleine Optical Co.
Kalem Co.
S. Lubin.
Geo. Melies
Pathe Freres
Society Italian "Cines"
Selig-Polyscope Co.
3 Vitagraph Co. of America
Williams, Browne & Earle

Very truly yours,

Committee:

J. STUART BLACKTON,
Of Vitagraph Co. of America
J. W. ULLMAN,
Of Society Italian "Cines"

4 By Mr. GROSVENOR:

Q. Was not the convention or meeting held at Pittsburgh, the place named on the advertisement, and on the dates named in the advertisement? A. Yes, sir.

Q. I show you an article headed or entitled "The Pittsburgh Conference," printed in the Moving Picture World of November 23d, 1907, Volume I, page 608, and ask you to read that article, and see if it refreshes your recollection as to what was done at that meeting? A. Yes, sir, I remember that very distinctly.

Q. Have you read the article? A. I have read most of it. 1

Q. This article purports to give a list of the manufacturers and rental exchanges present at the meeting, and names you as representing the Theatre Film Service Company of Chicago. Were you present at the meeting? A. Yes, sir.

Q. Were the various manufacturers who the article states were in Pittsburgh on Saturday and Sunday the 16th and 17th of November, at the Fort Pitt Hotel, Pittsburgh, Pennsylvania, to wit, American Mutoscope & Biograph Company, Messrs. Kennedy and Marvin; Edison Manufacturing Company, Alex T. Moore of New York, and Mr. Hardin of Chicago; Essanay Company, George K. Spoor, and G. M. Anderson; Kalem Company, George Kleine and Samuel Long; Kleine Optical Company, George Kleine; S. Lubin, S. Lubin and F. W. Singhi; George Melies, Gaston Melies; Society Italian Cines, I. W. Ullman and George F. Bauer-doy; Vitagraph Company of America, William T. Rock, Albert Smith and J. Stuart Blackton; Williams, Brown & Earle, J. Carrick,—were those individuals present there? A. Yes, sir, I think they were. 2

Q. The article then gives a long list of the rental exchanges, naming the persons present as representing the exchanges named. Were those individuals present? A. A great many of them were— 3

Mr. KINGSLEY: I object to this form of examination unless the names of the persons mentioned are spread upon the record.

Mr. GROSVENOR: I will ask the Examiner to copy this article, that is, the column giving the names.

Mr. CALDWELL: I object to the receipt of that article or any part of it in evidence, on the same grounds as I stated in objecting to the previous article or the advertisement from page 592 of that book, and also on the ground that the purpose of the offer, namely, to discredit the witness, is not shown at all or accomplished by this offer. It has no bearing whatever on the testimony of the witness, which was to the effect that these by-laws were prepared by this committee, the manufacturers were not members of the 4

1 Association, and the by-laws were not submitted to the manufacturers prior to their adoption.

2 Mr. KINGSLEY: I make the same objection on behalf of the other defendants. I also object to the introduction of this article piece-meal on the ground that it is intended to furnish a basis for misconstruction of the testimony of the witness, and it is intended to draw the inference that these manufacturers and these exchange men were in Pittsburgh, and holding a meeting together, when, as a matter of fact, the article only shows that they were registered at a hotel or at various hotels, as the case may be.

Mr. GROSVENOR: I will ask to have the whole of the article copied at this point, in order to meet the latter objection, although I intended to introduce the rest after some other questions, in order to make it more clear.

3 Mr. KINGSLEY: I now object to the introduction of the article in evidence, as a whole, on the ground that it is not binding upon any of these defendants. It does not tend to impeach the witness in the slightest, and is a mere newspaper publication having no significance with respect to the issues in this action.

The article offered is received in evidence and marked, "Petitioner's Exhibit 253," and is as follows:

Petitioner's Exhibit No. 253.

THE PITTSBURG CONFERENCE

4 The film manufacturers and film renters held a conference on Saturday and Sunday, 16th and 17th inst., at the Fort Pitt Hotel, Pittsburg, Pa., at which there were present, representing the manufacturers:

American Mutoscope and Biograph Company, Messrs. Kennedy and Marvin; Edison Manufacturing Company, Alex. T. Moore, of New York, and Mr. Hardin, of Chicago; Essanay Company, Geo. K. Spoor and G. M. Anderson; Kalem Company, Geo. Kleine and Samuel Long; Kleine Optical Company, Geo. Kleine; S. Lubin, S. Lubin and F. W. Singhi; Geo. Melies, Gaston Melies; Society Italian Cines, I. W. Ullman and Geo. F. Bauerdoyle; Vitagraph of

America, Wm. T. Rock, Albert Smith and J. Stuart Blackton; Williams, Browne & Earle, J. Carrick. 1

Representing the film renters:

BUFFALO—Powers Machine and Film Exchange, J. A. Schuchert.

CLEVELAND—Cleveland Film Renting Company, C. H. Peckham.

COLUMBUS—Ohio Film Exchange, J. W. Melchoir.

CHICAGO—Chicago Film Exchange, Max Lewis; Globe Film Service Company, J. Schuchat; Eugene Cline & Co., Eugene Cline; Laemmle Film Service, Carl Laemmle; W. H. Swanson & Co., W. H. Swanson; Standard Film Exchange, Joseph Hopp; Theatre Film Service Company, F. C. Aiken. 2

CINCINNATI—Southern Film Exchange, Thos. A. Reilly; The Nolan Film Exchange (Inc.), J. A. Nolan and E. R. Shaw.

DETROIT—National Film Company, Phil Gleichman; Michigan Film and Supply Company, Chas. J. Strong.

KANSAS CITY—Yale Film Renting Company, A. D. Flintom and C. F. Mensing.

NEW YORK—Miles Bros., Herbert I. Miles and D. MacDonald; Alfred Weiss Film Exchange, Alfred Weiss; Harstn & Co., Alfred Harstn. 3

PHILADELPHIA—Kohl Film Renting Company, Chas. W. Kohl; Electric Theater Supply Company, Harry Schwalbe.

PITTSBURG—Pittsburg Calcium Light Company, R. A. Rowland and J. S. Clark; Pennsylvania Film Exchange, Chas. A. Taylor and Paul Gaultrough; Duquesne Amusement Supply Company, L. Kreiger, S. Warner and H. M. Warner; Fort Pitt Film Supply Company, Dave Margoff and D. S. Johnson; American Film Exchange, J. L. Reilly and John P. Robinson; Columbia Film Exchange, A. S. Davis. 4

TOLEDO—Superior Film Supply Company, S. S. Richard; Toledo Film Exchange, H. E. Smith and L. M. Salsgiver.

DETROIT—Detroit Film Exchange, W. H. Goodfellow.

BIRMINGHAM, ALA.—W. Pechlje.

In addition to the above, letters and telegrams were received from several renting agencies, expressing full approval with the objects of the conference.

am heartily in favor of this movement whose purpose is to bring about an understanding among the film renting concerns. We should adopt a uniform rate. Classification rates should be abolished; I mean by this that there should be but one grade of service, or one rate only. It would then be up to the renter to hold his trade. I think it necessary for all renters entering into an agreement to deposit a certain amount of cash as a guarantee of good faith which would be subject to forfeiture in case of violation of agreement. A chairman would be appointed and also a man in each district whose duty would be to report weekly, say, to the chairman. The film renters' association and manufacturers and importers will provide ample funds to defray expense of the campaign. The success of the project can only be assured with the co-operation of the manufacturers and importers, and I cannot suggest a better course for them to pursue than to follow the example of the Pathe Freres. With best wishes for the full success of the convention.

BAILEY FILM SERVICE.

After the meeting had discussed various ideas relating to the business in general, the president was authorized to appoint a committee to consult with the manufacturers (who were meeting separately) and report again to the meeting of renters. After practically an all-night sitting, the committee drew up and submitted the following suggestions and resolutions to the meeting, which were unanimously adopted:

"WHEREAS, Through lack of organization, many evils have crept into the film-renting business, causing conditions which seriously threaten the good standing of film exchanges throughout the country; and,

"WHEREAS, The authorities in many cities have been and now are objecting to the nature of many films now being exhibited; and,

"WHEREAS, In the interest of the public there is practically an unanimous desire on the part of all interests connected with this business to remedy and improve the existing conditions and place the business upon the highest plane, where it will be an important factor in the advancement of the social, moral and educational welfare of your people;

"Therefore, be it resolved, That the film exchanges represented in convention assembled form an association to be known as the United Film Service Protective Association, for

1 the purpose of working in co-operation with the manufacturers, importers, jobbers and exhibitors of the films and accessories to improve the service now furnished the public, to protect each other in the matter of credits and all other conditions affecting our mutual welfare, and in general to take such action as will be appropriate to improve the conditions of the trade.

"Be it further resolved, That all film-renting exchanges be invited to join and affiliate with this movement.

2 *"Be it further resolved, That the initiation fee for charter members of the association be the sum of \$200, \$100 of which is to be paid on the completion of this organization and the balance to be paid ninety days from date. To be in force until November 30, when the association shall meet in Chicago, after which date the amount for initiation shall be \$400. The annual dues to be \$100, payable \$25 quartely in advance.*

3 *"That the officers of this association shall be a president, first vice-president, second vice-president, secretary and treasurer, who shall perform the usual duties appertaining to their respective offices and who shall be ex-officio the members of the executive committee, with four others, who shall manage the affairs of the association.*

"That the annual meeting of this association shall be held at a time and place to be selected by the executive committee, such time to be during the last week of January of each year, at which annual meeting the officers for the ensuing year shall be elected.

4 *"Resolved, That the executive committee be authorized to engage counsel and incur other necessary preliminary expense to complete the organization of this association and that an assessment of \$25 be paid by each member as the first installment of his subscription of \$200, to the treasurer at once, the balance of the said installment of \$100 to be paid at the next meeting of this association, to be held at Chicago, November 30, 1907, at which time a constitution and by-laws, to be prepared by the executive committee, shall be submitted to the association for action."*

The following were adopted as planks in a platform for the association and which all present signed:

"1. The renting interests enrolled as members to pur-

chase film only from the association of manufacturers and importers.

"2. No duplicating of film.

"3. The elimination of sub-renting. (A sub-renter was defined as one who, for the purpose of profit, secures film from a renter and re-rents it.)

"4. No film to be sold second-hand.

"5. Retiring of film purchased after it has been rented for a period to be decided; the reurning of this used film to the manufacturers."

RESUME OF PROCEEDINGS.

Saturday morning the various renting concerns began to file into the hotel and introduce themselves. This naturally took some time but was well spent. At 11.30 the first meeing was called to order, when W. H. Swanson, of Chicago, and D. MacDonald, New York, were appointed, respectively, president and secretary *pro tem*. The first business was the collating of a roll call of all present, their firms and standing. Mr. Swanson then welcomed the various delegates, gave an able and lucid address on the trials and difficulties, the good and evil points in the renting business, expressing the hope that the conference would be able to arrive at some definite policy, whereby the good could be improved and the evil eliminated. The ideas he expressed seemed to voice the sentiments of all, and after outlining the objects of the conference he made a suggestion that a committee on credentials be appointed, which was immediately acted upon. This committee at once set to work and reported favorably on the propriety of the conference. Following this a committee consisting of Messrs. Swanson, MacDonald, Peckham, Miles and Clarke were appointed to interview the manufacturers, the meeting adjourning to await the report of the committee, who at once proceeded to interview the manufacturers meeting in another room.

Both sides expressed their opinions, fully reviewing the pros and cons of the situation, and a plan was adopted whereby both manufacturers and renters could in future work in harmony with mutual benefit to both. The manufacturers expressed themselves as being in full accord with

1 the renters, and promised them their full support. Another meeting of renters was then held at 5 P. M., to receive the report of the committee. This meeting was held in private. Messrs. Swanson, MacDonald, Miles, Peckham and Clarke were appointed a committee on by-laws and constitution, to draft a form of government for the association.

2 At the close of the meeting the manufacturers extended an invitation to the renters to dine with them in the banquet hall, which was accepted by all the renters. And also, as representing the press, by Warren A. Patrick, of the *Show World*; L. Rubinstein, of *Views and Films*, and Alfred H. Saunders and J. P. Chalmers of the MOVING PICTURE WORLD.

3 After doing full justice to the good things put before them, Mr. Swanson called on the following for addresses: Messrs. Hopp, Patrick, Blackton, Kleine, Barker, Smith, Kennedy, Marvin, Moore, Howell, Miles, Chalmers, Saunders, Rowland, Menser, Peckham, Rubinstein, d'Hauterives, Ullman, Selig, Carrick, Melies, Long, Laemmle, Anderson, Rock Jr., Rock Sr., and Hardin. We must not forget that the following ladies added their charms and presence to the festivities: Mrs. Gaston Melies, Mrs. Rock and Mrs. John B. Rock.

Sunday the conference assembled at 4.30 P. M., at which both manufacturers and renters were present, at which the policy as above outlined was adopted.

To Mr. Eugene Cline, of Chicago, must be accorded the honor of being the first to record his name, and payment in full of the fees of membership, followed closely by others until \$2,000 was paid into the exchequer of the association.

4 (A photograph entitled "A few of the Manufacturers and Renters at the Pittsburg Conference," was incorporated in above article.)

By Mr. GROSVENOR:

Q. Please look at the names stated to be there for the rental exchanges, and indicate any names of persons that you think were not present. A. I will state that at the time of this first meeting at Pittsburg, I had met very, very few of the exchange men from anywhere, and that was my first

meeting with them. I can state possibly that some of these people were there. 1

Q. The article states, "The meeting was called to order by Mr. W. H. Swanson of Chicago, who was unanimously elected President pro tem, and Mr. D. McDonald of New York, Secretary pro tem." Is that correct? A. That is correct.

Q. And the "D. MacDonald" referred to Dwight MacDonald? A. Yes, sir, who, I think, at that time was connected with Miles Brothers.

Q. And became Secretary of the Film Service Association? A. Yes, sir.

Q. And thereafter became the manager of the Motion Picture Patents Company? A. Yes, sir. 2

Q. The article states: "After the meeting had discussed various ideas relating to the business in general, the President was authorized to appoint a committee to consult with the manufacturers (who were meeting separately) and report again to the meeting of renters." Is that a true statement? A. Yes, sir, I believe that is.

Q. The article also states: "The following were adopted as planks in a platform for the Association and which all present signed; 3

"1. The renting interests enrolled as members to purchase film only from the association of manufacturers and importers.

"2. No duplicating of film.

"3. The elimination of subrenting. (A. subrenter was defined as one who, for the purpose of profit, secures film from a renter and rerents it.)

"4. No film to be sold second-hand.

"5. Retiring of film purchased after it has been rented for a period to be decided; the returning of this used film to the manufacturers." Is that a true statement of what was done? A. I think most of those points were brought up. 4

Q. And were those matters adopted, or those sentences I have read, adopted as planks in a platform for the Association, and which all of those present signed? A. Most of those points were important points which we wanted adopted, and which were eventually adopted. Most of them.

Q. Was there any one of those paragraphs which was not made a plank in the platform and signed by all of them? A. I am not just sure of whether No. 5, the retiring of films

1 purchased, was carried out. I do not think it was, by the Film Service Association. And No. 2, no duplicating of films—that means, no duping.

Q. Were those measures that the film renters were desirous of having put into operation? A. Yes, sir; it was the film renters, yes, sir.

Q. This Mr. Swanson, W. H. Swanson, referred to, was the Swanson that was engaged in the rental exchange business in Chicago? A. Yes, sir.

2 Q. And other places? A. Yes, sir.

3 Q. This article states under the heading, "Resume of Proceedings": "Saturday morning, the various renting concerns began to file into the hotel and introduce themselves. This naturally took some time, but was well spent. At 11:30 the first meeting was called to order, when W. H. Swanson, of Chicago, and D. MacDonald, New York, were appointed, respectively, President and Secretary, *pro tem*. The first business was the collating of a roll call of all present, their firms and standing. Mr. Swanson then welcomed the various delegates, gave an able and lucid address on the trials and difficulties, the good and evil points in the renting business, expressing the hope that the conference would be able to arrive at some definite policy, whereby the good could be improved and the evil eliminated. The ideas he expressed seemed to voice the sentiments of all, and, after outlining the objects of the conference, he made a suggestion that a committee on credentials be appointed, which was immediately acted upon. This committee at once set to work and reported favorably on the propriety of the conference. Following this, a committee consisting of Messrs. Swanson, MacDonald, Peckham, Miles and Clark, were appointed to interview the manufacturers, the meeting adjourned to await the report of the committee, who at once proceeded to interview the manufacturers meeting in another room.

4

"Both sides expressed their opinions, fully reviewing the pros and cons of the situation, and a plan was adopted whereby both manufacturers and renters could, in future, work in harmony with mutual benefit to both. The manufacturers expressed themselves as being in full accord with the renters, and promised them their full support. Another meeting of renters was then held at 5 P. M., to receive the report of the committee. This meeting was held in private.

Messrs. Swanson, MacDonald, Miles, Peckham and Clark were appointed a committee on by-laws and constitution, to draft the form of government for the association:

"At the close of the meeting, the manufacturers extended an invitation to the renters to dine with them in the banquet hall, which was accepted by all the renters."

Then leaving off the names of some persons present: "After doing full justice to the good things put before them, Mr. Swanson called on the following for addresses: Messrs. Hopp, Patrick, Blackton, Kleine, Barker, Smith, Kennedy, Marvin, Miles, Moore, Chalmers, Howel, Saunders," and some others. The next paragraph is: "Sunday, the conference assembled at 4:30 P. M., at which both manufacturers and renters were present, at which the policy, as above outlined, was adopted."

Now, is that account of the meeting which I have read, in accord with your recollection of what was done at the meeting? A. I think it is pretty much correct, as I remember it.

Q. I show you an article headed, "Notice, United Film Service Protective Association," in the Moving Picture World, November 30th, 1907, page 628. Please read that article. A. Yes, sir.

Q. Does that refresh your recollection as to whether or not the next meeting of the Association was postponed from November 30th to December 14th? A. I think that the next meeting we had was held in Chicago.

Q. Where was it? A. Grand Pacific Hotel, Chicago.

Q. When was it? A. That is the time the officers were elected, of the Film Service Association, and, if I remember correctly, it was in December, 1907.

Q. What was in December, 1907? A. The meeting of the Film Service Association at the Grand Pacific Hotel, when the officers were elected. This meeting at Pittsburgh was simply a preliminary meeting.

Q. That is, the meeting at Pittsburgh on November 16th and 17th? A. Yes, sir. There was nothing definitely accomplished.

Q. The Association had not yet been formed? A. No, sir.

Q. It had been intended to hold the next meeting November 30th, which was postponed to the middle of Decem-

1 ber, in Chicago? A. Well, I don't remember distinctly as to whether or not the question of the next meeting was left to the committee, or whether it was decided there. I am not just sure on that.

Q. I show you an advertisement, page 637 of the Moving Picture World, being in the issue of November 30th, 1907, and ask you if that refreshes your recollection as to the date of the meeting in Chicago to which you have just referred? A. Yes.

2 Q. And when was that meeting held? A. I think it was held December 14th. It was some time in December, at the Grand Pacific Hotel.

Q. I show you an article in the Moving Picture World, December 21st, 1907, at page 682, entitled "The U. F. S. P. A." Please look at that. A. Yes, sir.

Q. I show you an account in the Show World, in the issue of December 28th, 1907, pages 10 and 11, being also an account of the meeting of December 14th at Chicago. The regular officers of the Association were elected at the Chicago meeting on December 14th?

3 Mr. KINGSLEY: I object to the form of the question.

The Witness: Yes, sir:

By Mr. GROSVENOR:

Q. And you were elected the Vice-President? A. Yes, sir.

4 Q. This article in the Moving Picture World which I have shown you states that George Spoor was there representing one of the film exchanges in Chicago. Do you recall his being present?

Mr. KINGSLEY: I object to the question as incompetent, immaterial and irrelevant; also object to the question, as improper in form.

The Witness: I believe that he was there.

By Mr. GROSVENOR:

Q. Also George Kleine is reported to have been there.

Do you recall his presence? A. Yes, sir; he was there representing the Kleine Optical Company, a rental exchange. 1

Q. And Mr. Selig is reported to have been present. Do you recall his presence there? A. I do not, no, sir.

Q. The article in the Show World which I have shown you states that on the night of the 14th, there was a banquet at which "in addition to the members of the Association, the following film manufacturers were represented: Edison Manufacturing Company, by Alex T. Moore and John Hardin, of Chicago; Essanay Film Manufacturing Company, George K. Spoor and G. M. Anderson; Kalem Company, Mr. Marvin; Vitagraph Company of America, William T. Rock, J. Stuart Blackton and Mr. Smith, of New York, and John Rock, of Chicago; Pathe Freres, J. A. Berst, or New York, and E. H. Montagu, of Chicago; G. Melies, George Melies, of New York; Gaumont and Urban-Eclipse Company, George Kleine and Edward Davis, of the Kleine Optical Company, Chicago, and H. Blache, personal representative of Mr. Gaumont." Do you recall the presence of those individuals that evening? 2

Mr. KINGSLEY: Objected to, as incompetent, immaterial and irrelevant, not binding upon the defendants, and whether it is true or false, not tending in any way to impeach the testimony of this witness. 3

The Witness: I believe they were there that evening.

By Mr. GROSVENOR:

Q. The by-laws had not yet been adopted, had they? A. I could not state definitely as to that, whether they were adopted as a whole by that evening, or whether they were completed and adopted at Buffalo. I am not sure. 4

Q. Showing you again the account in the Moving Picture World of the meeting of December 14th, does that refresh your recollection that the meeting on that day was adjourned to January 11th, to meet at Buffalo? A. Yes, sir.

Q. I show you an advertisement in the Moving Picture World, on the front cover, of January 4th, 1908, and ask you if that refreshes your recollection to the ef-

1 fect that the meeting called for January 11th at Buffalo was postponed to January 25th, 1908? A. I think that is correct.

Q. I ask you to look at an article on the editorial page, being page 71, of the Moving Picture World, for February 1st, 1908, the article being entitled "The U. S. F. P. A." Volume 2, page 71. A. Yes, sir.

2 Q. Does this article refresh your recollection so that you are able to testify that the meeting which had been postponed to January 25th, was further adjourned to February 8th, 9th and 10th, 1908, at Buffalo? A. I think it was.

Q. This article which you have just read, states: "The Executive Committee, sitting in New York, January 25th, passed on the by-laws suggested at Chicago, which will be adopted at Buffalo." Is that statement in accord with your recollection of the facts? A. I believe it is.

Q. Was this meeting referred to there, to be held on February 8th, 9th and 10th, as a matter of fact held at Buffalo on the dates named, namely, February 8th, 9th and 10th? A. I cannot state definitely the exact dates we met at Buffalo. I know we met there.

8 Q. You know that the meeting was adjourned from January 25th, don't you? A. Yes, it was adjourned.

Q. I show you Volume 2 of the Moving Picture World, page 111, the issue of February 15th, 1908. Please read the article on that page, and see if it will refresh your recollection as to the exact date of that meeting? A. Well, it does not refresh my memory as to the exact date any more than it states the date there. I cannot recall positively the exact date. I know it was in February.

Q. It was in the early part of February, wasn't it? A. Yes, sir.

4 Q. And it was at Buffalo? A. Yes, sir.

Mr. GROSVENOR: I offer in evidence the two articles on page 111, the first being entitled, "The United Film Service Association and the Film Manufacturers," and the next, "The Platform of the Association," that article extending over on to page 112. And also the article immediately following, entitled, "The Position of the American Mutoscope & Biograph Company," this latter article being already in evidence, and num-

bered Government Exhibit 54, Record, Volume I, page 131. 1

Mr. CALDWELL: These three articles are objected to, on the ground that they are wholly irrelevant and immaterial to any of the issues in this case, not binding upon any of the defendants in this case, one of them being an editorial merely, the other being entitled "The Platform of the Association"; the third being a statement entitled "The Position of the American Mutoscope & Biograph Company." On the further ground that there is not a word in any of the three articles that tends in the slightest degree to discredit the witness, and that having been stated by the counsel as the purpose for which he offers the articles. 2

Mr. GROSVENOR: Yes, all this evidence is offered for the purpose of showing that the by-laws of the Association were adopted with the approval of the manufacturers.

Mr. CALDWELL: I would like you to point out a single sentence there that shows that.

Mr. GROSVENOR: The two associations were formed simultaneously— 3

Mr. CALDWELL: I call upon counsel now, while this is being offered in evidence, to point out a single paragraph or word in any of the three articles that indicates that the by-laws of this Association were submitted to, or approved by the manufacturers.

Mr. GROSVENOR: This all goes to show that the manufacturers and rental exchanges were working in harmony, and to contradict the testimony given by the witness, which was repeated today; that is, the questions and answers at the beginning of the cross examination. 4

Mr. CALDWELL: The questions that were repeated by him today, questions and answers, related only to the question as to who framed these by-laws, and nothing else.

Mr. KINGSLEY: I object to the introduction of the articles offered in evidence, on the ground that they are incompetent, immaterial and irrelevant; that they are mere editorial declarations of the Moving Picture World; that they have no relation to the

- 1 issues in this action; that they are not binding upon any of these defendants, and that they have no probative force whatever, and are, for the purposes of this action, but the mere breath of rumor; also on the ground that this is not proper cross examination.

The articles offered are received in evidence, and are marked "Petitioner's Exhibit 254," and are as follows:

Petitioner's Exhibit No. 254.

2 **THE UNITED FILM SERVICE ASSOCIATION AND
THE FILM MANUFACTURERS.**

The Buffalo convention is a thing of the past. On February 8 and 9 there was formed one of the largest combines of industries, comprising manufacturers and film rental concerns of America, that are recorded in the history of cinematography.

- 3 Headed by the Edison Manufacturing Company, who claim to hold the sole right to issue licenses to manufacturers to use a perforated film, the following firms are in the combine: Kalem Company, Inc., New York; Vitagraph of America, New York; Pathe Freres (France), New York; Geo. Melies (France), New York; S. Lubin, Philadelphia; Essanay Film Manufacturing Company, Chicago, and Selig Polyscope Company, Chicago, together with the film renting concerns whose names appear on another page. We don't know whether to call this a gigantic trust, or a combine, or an association for the improvement of trade and protection of allied interests. Our attitude up to the present has been one of neutrality, a position
- 4 which we will retain and simply state facts without fear or favor. We have been interested spectators of a game of chess, and have been absorbed in the various moves of the players; so much so, that when we saw a bad move, we gave forth an exclamation at the carelessness of the players, when a pawn, or other piece, was captured through an inadvertent move. The game is still before us; the supreme move of *checkmate* is not yet made.

Since our return from Buffalo we have been inundated with queries as to the position of those firms outside the

combine; what they are to do and how they can overcome the difficulties now besetting them. At present we have no means of knowing. All we can say is, have patience. You may go out of business on March 1 (the time limit set), or you may not. There is a trite saying that "*He who laughs last laughs long,*" and the last laugh is not yet laughed. On other pages we have given the opinions of the press, and ask our readers to peruse those, and if they can glean any comfort from them, it is their's. One way out of the difficulty is for those renters who stand to lose their all to join with a concern already in the combine and act as agent or sub-office until such time as the strain is made less tense.

We feel sorry for those renters who were so short-sighted as to refuse, till too late, to join the United Film Association. We urged them, by voice and pen in these columns, to get in line, but, "*Qui Bono,*" you can lead a horse to water, but you can't make him drink; and now they must pay \$5,000 and wait one year for admittance. Who's to blame?

Who is left out?

The manufacturing firms not in the above combine are, in America: American Biograph, New York; Baker Manufacturing Company, Chicago; Payne Company, Rochester; Goodfellow Manufacturing Company, Detroit; O. T. Crawford Company, St. Louis; Penn Manufacturing Company, Pennsylvania, and Cameraphone Company, New York. Abroad, with American representatives: Urban Eclipse Company, London; Warwick Trading Company, London; Carlo Rossi, Italy; Gaumont Company, Paris, and Theo. Pathe, Paris—represented by Kleine Optical Company. Society Italian Cines, Rome; Williamson & Co., London—represented by Chas. Dressler Company. Cricks & Sharp, London; Sheffield Photo Company, Sheffield; General Cinematograph Company, London; Hepworth & Co., London—represented by Williams, Brown & Earle. In addition to these, there are two or three firms who import films, Swedish, Danish, German and Norwegian firms.

It was stated at the convention that Geo. Eastman had signed an agreement not to supply any of the above firms with film. We did not see the agreement, nor could we learn of anyone who had.

Our advice to our readers is: Do not be unnecessarily

1 alarmed; bide a wee in patience, and no doubt most of
the difficulties that look so formidable will prove very easy
after all.

THE PLATFORM OF THE ASSOCIATION.

2 It is claimed that the motives which led to the combination of interests between the manufacturers were "ninety-nine parts commercial and one part legal, the legal aspect being only a stepping stone to accomplish the prime object of placing the business on a substantial footing for the ultimate benefit of all concerned." Be that as it may, it has long been obvious to all that certain abuses were rapidly bringing about a state of affairs which heralded ruin to the entire business.

3 As conditions existed there was no incentive to manufacturers to put forth their best efforts to produce films that were photographically perfect as well as morally clean. Productions which should never have seen the light of day and which could not be sold at the regular price would be disposed of at any figure. On the other hand, film renters would send out films as long as a sprocket hole remained, whereas in future all film must be returned to the manufacturer after a certain date.

4 It is readily seen that much good will come from certain of the resolutions adopted provided that they are rigidly adhered to. If the quality of the show is alone improved it will restore this form of entertainment to public favor and tend to ensure its permanence and growth. The film renters still have it in their power to work together for this end. They are not compelled to purchase all the products of the league of manufacturers and those who furnish the best selection in the best condition will get the cream of the business.

What a pity it is that a resolution was not presented and adopted at the Buffalo meeting that all the renters should empty their vaults of the miles of junk they now retain, the same to be credited to them by the manufacturers at a price mutually agreed upon. What a glorious bonfire this would have made to celebrate the formation of the Film Service Association and blazon its way to success.

THE POSITION OF THE AMERICAN MUTOSCOPE 1
AND BIOGRAPH COMPANY.

Owing to the tense position of affairs we interviewed Messrs. Kennedy and Marvin, of the Biograph Company, and the following signed statement is their reply to the trade:

"We were urged to join the Edison-Pathe combination, but we refused.

"The Court of Appeals has twice repudiated the claims of Edison that he is the creator of the moving picture art, 2
and has limited his patent to his own particular form of apparatus. The same court has also decided that our apparatus does not infringe the Edison patent.

"We stand absolutely independent and protected by our own patents.

"We have largely increased our capacity and are prepared to regularly supply our own films and the films of the best foreign manufacturers in any quantity.

"We will, at our own expense, protect our customers from any form of patent persecution in connection with film supplied by us. 3

"Edison cannot obtain an injunction against any renter or exhibitor for the reason that his film patent has not been adjudicated and a decision cannot be obtained in less than two years."

"H. N. MARVIN.

"J. J. KENNEDY."

By Mr. GROSVENOR:

Q. I also show you an article in the Show World, February 22nd, 1908, page 11, purporting to be an account of this meeting in Buffalo on February 8th, and ask you to read that. 4

Mr. KINGSLEY: I object to the witness being asked to read numerous articles offered to him here by the attorney for the Government. The witness is here to be cross examined, and not to read articles.

1 By Mr. GROSVENOR:

Q. This latter article which I have shown you from the Show World states—

Mr. KINGSLEY: I object to any statement from the Show World, on the ground that it is incompetent, immaterial and irrelevant. This is not proper cross examination.

By Mr. GROSVENOR:

2 Q. "The manufacturers who have agreed to co-operate with the Association are as follows: Edison Manufacturing Company, Pathe Cinematograph Company, American Vitagraph Company, Kalem Company, Selig Polyscope Company, S. Lubin, Melies Company, and the Essanay Company." Does that statement accord with your recollection of the facts?

3 Mr. KINGSLEY: I object to the question, as incompetent, immaterial and irrelevant, on the ground that this is not proper cross examination; it is not the proper way of refreshing the witness' recollection; that it calls for a comparison and conclusion on the part of the witness. I may state, for the benefit of the witness, that refreshing his memory means that his memory must be awakened to the fact, so that, independent of the material which has refreshed it, he remembers.

By Mr. GROSVENOR:

4 Q. Repeat that question for the witness, and see if he can answer it.

The Examiner repeats the question as follows:

"Q. 'The manufacturers who have agreed to co-operate with the Association are as follows: Edison Manufacturing Company, Pathe Cinematograph Company, American Vitagraph Company, Kalem Company, Selig Polyscope Company, S. Lubin, Melies Company, and the Essanay Company.' Does that statement accord with your recollection of the facts?"

The Witness: Our Association requested co-operation of the manufacturers; in fact, we had conferences with the manufacturers, for the purpose of impressing upon them the importance of making good film, and to eliminate objectionable subjects which were creeping on the market at that time.

By Mr. GROSVENOR:

Q. And these names that I have read you, were the manufacturers who at that time agreed to co-operate with you in the purposes for which this Association was formed?

A. Those manufacturers that you mentioned were the principal manufacturers at that time, and from whom we practically received our entire source of film, or a majority of it.

Q. This list that I have read does not include the Biograph Company. Do you observe that? A. I do.

Q. Was it the fact that these manufacturers whose names I have read did agree at that time to co-operate with the Association? A. I believe that they offered to do anything that they could to assist us for the betterment of the business.

Q. The Biograph Company did not join with the others in agreeing to co-operate with you at that time? A. I do not believe they did, no, sir.

Whereupon, at 4:30 P. M., on this Thursday, the 11th day of December, 1913, the hearings are adjourned until 10:30 o'clock A. M., on Friday, December 12th, 1913, at the Hotel Manhattan, New York City.

1

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

2

UNITED STATES OF AMERICA,
Petitioner,

v.

MOTION PICTURE PATENTS Co. and others,
Defendants.

No. 889.

Sept. Sess., 1912.

NEW YORK CITY, December 12, 1913.

The hearings were resumed, pursuant to adjournment, at 10:30 o'clock A. M., December 12, 1913, at Room 159, Manhattan Hotel, New York City.

3

Present on behalf of the Petitioner, Hon EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

4

J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America and Albert E. Smith.

Thereupon FRED C. AIKEN resumed the stand.

1

Cross examination continued by Mr. GROSVENOR:

Q. Not only the Biograph Company refused to join with the other manufacturers in February, 1908, but also Kleine, and his rental exchanges, declined to join?

Mr. CALDWELL: I object to the question on the ground that it calls for a conclusion of the witness relative to what was done by the Biograph Company, and by George Kleine, and the remaining parties, with whom he was not associated, and regarding whom he can have no knowledge.

2

The Witness: I know that they did not join with the others.

By Mr. GROSVENOR:

Q. Then you know that Kleine and the Biograph Company did not join with the others? A. Yes, sir.

Q. And immediately thereafter, that is, within a few days, or a few weeks more litigation occurred between the Biograph Company and the Edison people? A. Why, I don't know as to that.

3

Q. When was this litigation respecting which you have testified to on direct examination? A. I don't know the exact date, but it was in Chicago, before Judge Kohlsaas.

Q. That was the litigation you had in mind when you testified on direct examination, page 2331, Vol. IV: "Q. Was that litigation a matter of common knowledge in the business in Chicago at that time? A. I think it was. Q. Can you state whether, in fact, that litigation had any injurious effect upon the business at that time? A. So far as I was concerned, it did."

4

Mr. CALDWELL: That question is objected to on the ground that the witness testified to two definite periods of litigation, and the questions now read by counsel to the witness are indefinite in stating to which they refer. He testified to litigation in 1907, prior to the Edison license arrangement, and then

1 he testified about litigation in 1908, between the Edison and the Biograph Companies.

Mr. GROSVENOR: I object to this as manifestly improper, being a reminder by counsel to this witness of the testimony he gave on direct examination. I have a perfect right to cross examine this witness, in order to test his recollection and the accuracy of his statements, without having brought to his attention everything he did testify to, and counsel well knows that is my right on cross examination.

2 Mr. CALDWELL: You know perfectly well you have no right to single out a single question from the witness' direct examination for the purpose of confusing him.

Mr. GROSVENOR: Now repeat the question to him.

The question was repeated to the witness as follows:

3 "Q. That was the litigation you had in mind when you testified on direct examination, page 2331, Vol. IV: "Q. Was that litigation a matter of common knowledge in the business in Chicago at that time? A. I think it was. Q. Can you state whether, in fact, that litigation had any injurious effect upon the business at that time? A. So far as I was concerned, it did."

The Witness: I don't know that that was the specific case, because I knew of the litigation for many years.

By Mr. GROSVENOR:

4 Q. What litigation was it you had in mind when you said in your direct examination that it hurt your business? A. I had in mind the litigation, this particular litigation, at that time.

Q. That is the litigation in 1908? A. Yes, sir.

Q. And particularly the litigation in Chicago, before Judge Kohlsaat? A. Yes, sir.

Q. And that was litigation in connection with the film patent, was it not? A. I think it was on the film and camera patents.

Q. Was it not particularly in regard to the film patent, upon which Mr. Dyer, of the Edison people, had brought

many suits in the Spring of 1908, against Kleine's customers, in Chicago? A. I think it was. 1

Q. I want you to please refresh your recollection by reading various articles in the Show World. I show you the Show World of March 7th, 1908, page 8, an article entitled "Opposing Moving Picture Interests Fire First Guns in Great War for Supremacy. Edison Claims Absolute Rights by Virtue of Camera Patent. Kleine Talks. Biograph Company Denies Validity of Patents": A. I have read it.

Q. Do you recall reading this article at the time it appeared in the Show World? A. I think I read that at the time. I usually read the trade papers. 2

Mr. GROSVENOR: I offer it in evidence.

The article offered is received in evidence and marked by the Examiner "Petitioner's Exhibit No. 263," and is as follows:

Petitioner's Exhibit No. 263.

**OPPOSING MOVING PICTURE INTERESTS FIRE
FIRST GUNS IN GREAT WAR FOR SUPREMACY!** 3

Edison Claims Absolute Rights by Virtue of Camera Patents.

The Edison Manufacturing Company, of Orange, N. J., through General Manager William E. Gilmore, last week issued the following important statement to exhibitors of moving pictures in the United States:

Gentlemen: 4

A brief statement of the development of the motion picture art, and especially of its relation to the actual business conditions at present existing, and also an explanation of the effort recently made to better those conditions referred to in the public press, will be of interest to all exhibitors.

The modern art of reproducing animate motion by photography was invented and to a large extent made commercially possible by Thomas A. Edison. Patents were

- 1 granted to him covering, first, the camera used for securing the pictures photographically, and, second, the motion picture films as a new product. These patents expire in August, 1914. We are advised by counsel that no practical and satisfactory camera can be used in this country that does not infringe the Edison camera patent, and that no motion picture film is now made that does not infringe the Edison film patent. Every motion picture film in use today, whether produced in this country or imported from abroad, is undeniably an infringement of the Edison film patent.
- 2

Suit for Infringement.

- Upon the issue of the Edison patents, suit was commenced against a manufacturer of films for infringement of the Edison camera patent, and after many years of litigation and the expenditure of many thousand dollars, the suit was decided in our favor, and the patent was held to be infringed by the United States circuit court of appeals in New York. We are advised that this decision carries with it a substantial recognition of the Edison film patent, since the film is the product of the Edison camera, whose novelty and patentability have been judicially determined.
- 3

Other Manufacturers in Field.

- During the litigation in question, numerous other manufacturers entered the field, which we were powerless to prevent, since it was first necessary that the original suit should be pressed to a final conclusion before others could be prosecuted with any probability of success. The business grew to very large proportions, film exchanges were inaugurated, and several thousand exhibitors sprang up all over the country. Two years ago motion picture shows were in great public demand, but at the present time they have fallen into disfavor if not actual disrepute. The reason for this change is not hard to find. Destructive and unbusinesslike competition among the exchanges in the effort to secure new business, involving the renting of reels below the actual cost of the service, has made it necessary to keep on the market worn-out and damaged films that have long since lost their usefulness.
- 4

Bad Films Hurt Business.

1

A show in which such films are used can only do harm to the business. Everyone having the vital interests of the business at heart must know that if the public is to be instructed and amused, it must be by the use of films of high quality, in good condition and of novel and ingenious subjects. Although everyone recognized this fact there seemed to be no remedy, and the conditions went on, pulling the business down to a lower plane from month to month.

With the sustaining of the Edison camera patent and the strong probability that the Edison film patent would also be upheld by the courts, the important and responsible manufacturers in the country were wise enough to see that those patents would have to be acknowledged, and consequently applications for licenses were made to us.

2

It was then recognized that by properly limiting the conditions of these licenses the evils that have invaded the business could in a large measure be overcome, and the business be eventually placed on a high and legitimate plane.

3

Licenses Issued to Film Firms.

Licenses have therefore been granted to the following concerns, which, with the Edison Manufacturing Company, are alone authorized to manufacture or sell non-infringing films in this country:

Essanay Company.

Kalem Company.

S. Lubin.

G. Melies.

Pathe Freres.

Selig Polyscope Company.

Vitagraph Company of America.

4

Under the licenses which have so far been granted, involving the payment of royalties for the use of the patents, we have required that certain conditions shall be strictly observed, the most important of which, to the exhibitor, are the following:

(1) Licensed motion pictures are sold only to licensed exchanges, who shall agree in writing with the several

1 manufacturers not to rent out the pictures below the agreed minimum rental schedule.

(2) Any exchange cutting prices, offering special inducements to exhibitors or in any other way violating its agreements with the manufacturers, shall be immediately cut off and will not thereafter be recognized by any of the licensed manufacturers.

(3) The exchanges agree with the licensed manufacturers to return every film purchased from them within a specified time.

2 (4) The manufacturers will not in any way recognize exchanges dealing directly or indirectly in infringing films, and the exchanges in turn agree that they will supply films only to exhibitors who use licensed pictures exclusively.

We are assured by counsel that the above conditions are in every respect entirely legal and that any violation thereof can be proceeded against by an action for infringement of the Edison patents. In this connection a few decisions of the United States Courts may be briefly referred to.

3 In Bement & Sons vs. National Harrow Co. (186 U. S. 70), the Supreme Court of the United States said:

4 "The provision in regard to the price at which the licensee would sell the article manufactured under the license was also an appropriate and reasonable condition. It tended to keep up the price of the implements manufactured and sold, but that was only recognizing the nature of the property dealt in, and providing for its value as far as possible. This the parties were legally entitled to do. The owner of a patented article can, of course, charge such price as he may choose, and the owner of a patent may assign it, or sell the right to manufacture and sell the article patented, upon the condition that the assignee shall charge a certain amount for such article."

Victor Talking Machine Case.

In Victor Talking Machine Company vs. The Fair (123 Federal Reporter, 424), the United States Circuit Court of Appeals in Chicago said:

"Within his domain, the patentee is czar. The people must take the invention on the terms he dictates or let it alone for seventeen years. This is necessary from the

nature of the grant. Cries of restraint of trade and impairment of the freedom of sales are unavailing, because for the promotion of the useful arts, the Constitution and Statutes authorize this very monopoly." 1

The same high Court in Rubber Tire Wheel Co. vs. Milwaukee Rubber Works Co. (154 Federal Reporter, 358), said:

"Under its Constitutional right to legislate for the promotion of the useful arts, Congress passed the patent statutes. * * * * Congress put no limitation, except time, upon the monopoly. Courts can create none without legislating. The monopoly is of the invention, the mental conception as distinguished from the materials that were brought together to give it a body. * * * * Use of the invention cannot be had except on the inventor's terms. Without paying or doing whatever he exacts no one can be exempted from his right to exclude. Whatever the terms, Courts will enforce them, provided only that the licensee is not thereby required to violate some law outside of the patent law, like the doing of murder or arson." 2

See also:

Edison Phonograph Co. et al vs. Kaufman, 105 Federal Reporter, 960. 3

Edison Phonograph Co. et al vs. Pike, 116 Federal Reporter, 863.

National Phonograph Co. vs. Schlegel, 128 Federal Reporter, 733.

Will Enforce Its Rights.

While, therefore, under our legal and constitutional authority as the owner of the Edison patents, conditions and limitations might have been lawfully imposed which would have been harsh and onerous, we have sought only to exercise our rights in the premises to the extent of enforcing such conditions as will inure to the best interests of the business. The conditions which we have imposed will without doubt, be of great advantage to the exhibitors as they will oblige the exchanges to give better service and will prevent them from renting films for more than a limited time. This is bound to mean a wonderful improvement over present conditions. 4

The exchanges of this country (who have recently

1 formed an association under the name of the "Film Service Association"), have admitted that the conditions imposed by our licenses represent the only possible way to save the business of the exhibitor and the exchanges from ruin. For this reason they have decided to use exclusively licensed motion pictures manufactured under the Edison patents, and they have agreed to be bound by contracts of sale imposed by the undersigned and the seven licensed manufacturers above referred to, in which the conditions imposed by our license are expressed.

2

Position of Exhibitors.

The position of each exhibitor who may wish to handle licensed pictures and avoid the danger and expense involved in using infringing pictures, will be as follows:

(1) The exhibitor will have to rent films exclusively from exchanges who have agreed by contract to conform to the conditions imposed by the licenses, under the Edison patents.

(2) The exhibitors will have to pay for service not less than the agreed minimum rental schedule.

3

(3) Each exhibitor will have to sign a contract for each of his shows, with his exchange, for licensed motion pictures, such contract obliging the exhibitor to give a guarantee bond and preventing him from sub-renting films which are supplied to him.

Will Protect Licensees.

4

For our part we have obligated ourselves so far as lies within our power, as the owner of the Edison patents, to protect our licensees, whether they be manufacturers of licensed films, exchanges exclusively handling the same, or exhibitors using them, and we propose to institute suit against manufacturers and importers of infringing films, as well as against exchanges and exhibitors who may have such infringing films in their possession, for infringement of the Edison patents, and will push such suits to a final conclusion without regard to the expense involved. Furthermore, we stand ready at all times to protect our licensees, manufacturers, exchanges and exhibitors, from all suits or actions which may be brought against them for making, selling, renting or using licensed motion pictures

under the Edison patents, provided, of course, the entire handling of such suits is entrusted to attorneys of our own selection. 1

Yours very truly,
EDISON MANUFACTURING COMPANY,
By WILLIAM E. GILMORE,
General Manager.

The undersigned licensed manufacturers under the Edison patents, endorse all the statements above made.

Signed:

ESSANAY COMPANY, 2
By George K. Spoor, President.
KALEM COMPANY,
By F. J. Marion, Treasurer.
SIEGMUND LUBIN.
GEORGE MELIES,
By Gaston Melies, Attorney.
PATHE FRERES,
By J. A. Berst, Assistant Treasurer.
SELIG POLYSCOPE COMPANY,
By Wm. N. Selig, President.
VITAGRAPH COMPANY OF AMERICA, 3
By Wm. T. Rock, President.

KLEINE TALKS—BIOGRAPH COMPANY DENIES VALIDITY OF PATENTS.

George Kleine, president of the Kleine Optical company, was interviewed last week by a reporter for THE SHOW WORLD, and he authorized the publication of his views regarding the moving picture industry, which are as follows: 4

"The moving picture business of the United States is now divided into two distinct sources of supply, and neither the rental exchange nor the exhibitor can secure films from both.

"The Edison Manufacturing company, acting under its own patents, has licensed certain manufacturers to make and sell moving picture films.

"The Biograph company, under its patents, has licensed the Kleine Optical company, representing nine European

- 1 manufacturers; Italian Cines, Williamson & Co., London, and Williams, Brown & Earl, who import certain other lines of English films.

"As the bearing of these patent claims is of the utmost importance, and appears to be so slightly understood, not only by the rental exchanges but by the exhibitors as well, I will attempt to explain the situation as briefly as possible, as I understand it.

Edison Patents Litigation.

- 2 "Mr. Edison received letters patent No. 589,168 on Aug. 31, 1897, covering moving picture cameras and films. Litigation ensued between himself and the Biograph company, the latter being made defendants as infringers of this patent. The question was fought through the courts during an extended period, and the final decision upon this patent was rendered by the U. S. Circuit Court of Appeals on March 10, 1902, by Judges Wallace, Lacombe and Townsend, disallowing the Edison claims in toto.

- 3 "The court stated in effect that application should have been made to cover the specific apparatus used by Edison, and that the attempt to cover the entire moving picture art, broadly, could not stand.

"Edison then applied at the patent office for a re-issue, dividing his original claim into two applications for patents, one of them covering his specific type of moving picture camera, and the other covering motion picture films. Letters patent No. 13,037 were granted thereon, Sept. 30, 1902.

- 4 "Suits were then brought against the Biograph company and others for infringement of the camera claim, and these were strenuously defended for the Biograph company by Messrs. Kerr, Page & Cooper, whom I consider the most thoroughly informed firm of patent attorneys on moving picture matters in the United States.

Decision Applied to Camera Only.

"This litigation passed through the lower and the higher courts, and a decision was rendered early in 1907. In order to understand the question properly it must be emphasized that this decision applied to the camera only,

and not to motion picture films, which the court dismissed in the following terms:

“In the prior suit the circuit court sustained claims Numbers 1, 3 and 5, and those only came to this court upon the appeal. It was held that the patentee was not entitled to such broad claims, the decree of the circuit court was reversed, and the bill dismissed.

“Thereupon the patentee applied for, and obtained, a re-issue in two patents, one for the film as a new article of manufacture (the subject of original claim Number 6), *which is not involved in this case*, and the other (camera patent) which is now sued upon.’

Validity of Patents Established.

“This decision was advantageous to both litigants, as it established the validity of the Edison and the Biograph patents on cameras, i. e., the court declared that the Biograph company owned an original, valid patent covering its own apparatus, entirely distinct from the Edison camera, and the patents covering the latter were also upheld.

“According to the present situation, therefore, no moving picture negative can be made in the United States without infringing either the Edison or the Biograph camera patent. The rights of these two patentees are independent of each other, and each can license a manufacturer to make moving picture negatives in the United States upon his own apparatus.

“We now come to the Edison patent covering films. Clauses 5 and 6 of the original application by Edison, covering films as ‘an unbroken transparent or translucent, tape-like photographic film, having thereon equi-distant photographs of successive positions of an object in motion, all taken from the same point of view, such photographs being arranged in a continuous, straight-line sequence, unlimited in number, save by the length of the film.’

Question of Perforated Edges.

“Paragraph 6 of the original application covers films in the same terms, adding the phrase ‘with perforated edges.’

“If these claims were declared valid, Edison would control the making of motion picture films, with or without perforated edges. However, these claims have never

1 been fought through the courts, although I have been informed that suits having been brought from time to time against Pathe Freres, the Vitagraph Company of America, and possibly others unknown to me. They were never adjudicated nor brought to a conclusion.

"The question that arises, therefore, which is of greatest interest to film buyers and users, is, what is the possibility of the courts declaring the validity of the Edison film patents?

2 "I consider the decision of the Circuit Court of Appeals, referred to above, of March 10, 1902, as a precedent of the greatest value in enabling us to reach a conclusion as to the probable action of the court when this matter comes before it.

Extracts from Decision.

"That decision commented upon the film claims as follows:

3 "*It is obvious that Mr. Edison was not a pioneer, in the large sense of the term, or in the more limited sense in which he would have been if he had also invented the film. He was not the inventor of the film. He was not the first inventor of apparatus capable of producing suitable negatives, taken from practically a single point of view, in single-line sequence, upon a film like his, and embodying the same general means of rotating drums and shutters for bringing the sensitized surface across the lens, and exposing successive portions of it in rapid succession.*"

"The court then says regarding original claim No. 5:

4 "*The fifth claim of the patent is obviously an attempt by the patentee to obtain a monopoly of the product of the apparatus described in the patent, so that in the event it should turn out that his apparatus was not patentable, or the product could be made by apparatus not infringing his, he could nevertheless enjoy the exclusive right of making it. A claim for an article of manufacture is not invalid merely because the article is the product of a machine, whether the machine is patented or unpatented; but it is invalid unless the article is new in a patentable sense,—that is, unless its original conception or produc-*

tion involved invention, as distinguished from ordinary mechanical skill. If it is new only in the sense that it embodies and represents superior workmanship, or is an improvement upon an old article in degree and excellence, within all authorities the claim is invalid. * * * *

Length of Film Not Defined.

“By the terms of the claim the length of the film is not defined, nor is the number of photographs which it is to represent defined. It is to be an unbroken, transparent or translucent, tape-like photographic film; it is to have thercon equi-distant photographs of successive positions of an object in motion; these photographs are to be arranged in a continuous, straight-line sequence, and the number of them is not limited, save by the length of the film. The film was not new, and if the other characteristics of the product are not new, or are new only in the sense that they add to the article merely a superiority of finish, or a greater accuracy of detail, the claim is destitute of patentable novelty.

“In view of these proceedings, and the acquiescence of the patentee in the limitations imposed upon the claim by the patent office, its novelty depends mainly upon the length of the film. This feature of the claim is satisfied by any film which is long enough to carry a sufficient number of successive pictures to reproduce, when properly used, some definite cycle of movements to convey the impression of reality to the observer. A film having this characteristic was not new, in the sense that its production involved invention. The Du Cos (patented in 1864) apparatus was capable of taking the requisite number of pictures in series suitable for using in an exhibiting apparatus. Prof. Morton, the expert for the complainant (Edison) in his testimony, conceded that a series of photographs of an object in motion could have been taken upon a paper strip by the camera of the certificate of addition of the Du Cos patent, and these negatives might have been transferred to a translucent paper strip, as a series of positives and that it would require no invention, in view of the instructions which Du Cos gives as to doing this, to prepare such a strip of paper with a series of pictures upon it. He differentiates the film of the claim from the film which

1 *could have been thus produced in the fact that the pictures, not having been taken from a single lens, would not all be taken from the same point of view. This conclusion, however, overlooks the fact that practically the images were produced from the same point of view, in the Du Cos apparatus,—the single aperture through which the lenses operate, and that it is quite immaterial whether the same point of view is obtained by the use of a single lens, or by the use of a number of lenses, for the purpose of meeting this characteristic of the claim.*

2 *“We conclude that the court below erred in sustaining the validity of the claims in controversy, and that the decree should be reversed, with costs, and with instructions to the court below to dismiss the bill.”*

Merits of Latham Patents.

3 *“On the other hand, the Biograph company own the Latham patent, which has been very little known except by those who have made a special study of motion picture inventions. Disregarding the other claims of this patent, I consider the first paragraph of the utmost importance, so far as the legal aspect of the question is concerned. The merits of the patent have not yet been passed on by the courts.*

4 *“The main point involved covers the use of the loop between the upper sprocket of a projecting machine, or camera, and the film gate. I know of no camera or projecting machine using a film longer than 75 feet which can possibly evade the use of the loop. The claim is simple, but radical. If it is declared valid by the courts, no camera nor projecting machine crank will turn in the United States unless authorized by the Biograph Company, engaging films longer than 75 feet.*

“Suits were brought against the Edison Manufacturing company by the Biograph company several days ago, for infringement of this patent.

Contract With Biograph Company.

“In order to guarantee protection to buyers and users of the films marketed by the Kleine Optical company, we have made a contract with the Biograph company covering all of these films, and in accordance with its terms any suit

that may be brought against purchasers or exhibitors for alleged infringement of the Edison film patent because of the use of our films will be defended by the Biograph company, free of charge; and, furthermore, immunity is given against prosecution for infringement of the loop patent of the Biograph company, to those using films licensed by the Biograph company.

"As to the general policy of my company, it will place upon the market all desirable novelties made by the nine European manufacturers whose product we control in this country, and also films made by the Biograph company. In addition, we shall handle films imported by Italian Cines, Williamson & Co., and Messrs. Williams, Brown & Earl.

"It shall be our purpose to exploit these films throughout the United States, making them easily available to all exhibitors, either through our various rental bureaus, or renting companies with which I am personally affiliated, as well as through any independent rental exchange that wishes to purchase these films.

Establishing New Connections.

"New connections are being established as rapidly as possible. Missouri points will be supplied with independent films from a new office in St. Louis established by the Kleine Optical company of Missouri.

"A new rental bureau will be in operation at Birmingham, Ala., Monday, March 2. Our other rental bureaus at Seattle, Denver, Des Moines, Indianapolis, Montreal and New York are fully equipped to give the most efficient service.

"We have been in constant communication by cable, since the convention at Buffalo, with the European manufacturers whom we represent, and they have entered into the spirit of the situation in a most enthusiastic manner, promising a series of film novelties that will excell from every standpoint.

"All films that we control, and those of affiliated concerns, acting under the Biograph license, will be sold outright, without restrictions as to their use.

"The question that has become of vital importance to rental exchanges is the purchase of films. After mature consideration the Kleine Optical company will hereafter

- 1 abolish the system of standing orders for new subjects. I have long recognized that to insist upon the purchase of all new subjects, long before they are seen, or even manufactured, is an injustice to the rental exchanges, and an imposition upon the exhibitors who are compelled to use undesirable films, forming a material percentage of the total output, frequently against their will. In the early days of the exhibiting business as it now exists this could not be considered unreasonable, as the supply of subjects was limited, and every film was usable that was not obscene, extremely vulgar, or highly sensational.
- 2

Censorship Policy Followed.

"We have always followed the policy of censorship at the root, and have never imported films that could be considered objectionable from any view-point. This is due to our system of inspecting samples of every subject before our stock was shipped from Europe.

- "The standing order system is oppressive also because it compels the rental exchange to accept an indefinite quantity of films, subject to great variations from week to week.
- 3 No exchange, under this rule, can state in advance the total sum of its film bills,—a condition which would not be tolerated in any other line of trade.

"In harmony with this position, we have decided upon a uniform price for films to all rental exchanges in good standing, irrespective of size or quantity purchased. A large exchange will have no advantage, because of heavier purchases, over the small concern.

- "In view of the fact that we charge a selling price for films, we think it but just that the buyer own the goods that he has paid for, without restriction, and do not attach any conditions calling for the return of our films at the expiration of a stated period.
- 4

Purchasers May Rent Films.

"Purchasers of our films are at liberty to rent them to others, without restrictions as to rental prices, or manner of use.

"A movement has originated in Chicago among owners of nickelodions which bids fair to spread to all large cities of the United States. These exhibitors have formed an

association called the Moving Picture Theatre Protective Association of Chicago, with varied objects, among them being resistance to oppressive city ordinances, and in general to further the interests of the members. 1

"A forward step has been taken by this association in the matter of film rentals. A new renting exchange has been formed, called the Independent Film Exchange, incorporated under the laws of Illionis, of which I have the honor to be president.

"Reciprocal arrangements have been made by which this exchange will rent films in Chicago only to members of the Moving Picture Theatre Protective Association, which will confine its rentals to the Independent Film Exchange. This system will strengthen both the exchange and the association, I am prepared to assist in the furthering of this movement throughout the United States in any city capable of supporting such an exchange. 2

"The activities of these exchanges are not to be confined to their home cities, the exclusive feature being applied only in the city of origin. I will be pleased to hear from owners of picture theatres in other cities, and will give information as to details of organization. The efforts of these local associations need not be confined to the rental of films, but can include united action upon and question of interest. 3

"Attention need hardly be drawn to the strength of such an association against all opposing interests that may be inimical.

Future of Industry Promising.

"I would say to those pessimists who are doubtful as to the future of the moving picture industry, that, in spite of the present unsettled—not to say critical—condition of affairs, the future appears to me to be more promising than ever. Case after case can be cited demonstrating the increasing interest in motography upon the part of the general public. If there were any evidence of a lessening of this public interest, I would consider the situation of serious concern. 4

"It should be gratifying, however, to every one interested that public interest is growing, and the general average tone of moving picture shows is improving. So far

1 as my observation extends, it is demonstrated that for every small store show that closes, a large moving picture theater is opened.

"I need only mention the use of Keith's theaters, in New York city, exclusively for moving picture shows, replacing vaudeville; also, the Garrick at St. Louis, the Lyric at Cleveland, the Orpheum at Chicago, and the Hopkins at Louisville,—all of them pretentious houses, many involving the payment of enormous rentals.

2 *Will Improve Exhibitions.*

"The introduction of moving pictures into theaters of this character must undoubtedly tend to improve the character of the exhibitions, as well as enlist the patronage of a class of people who have heretofore known nothing of that branch of entertainment, having been inclined to consider this class of amusement beneath them.

3 "In Paris, France, the Hippodrome is to be devoted exclusively to moving pictures. This seats some 7,000 people, and will have an orchestra of 60 pieces. The films for this resort will be supplied in the main by the European manufacturers whose product will be marketed in this country under the Biograph license, and the same subjects will be available for the most humble nickelodion in the smallest country town.

4 "It appears to be inevitable, much as I regret it, that there will be two factions in the motion picture field for some time to come; and that circumstances force me and the Kleine Optical company, with which I have been identified since its inception, into a position of business opposition to many personal friends engaged in this business, for whom I have the highest regard. I can only say in conclusion that if competition becomes bitter, the conflict will be conducted, as far as we are concerned, along clean and wholesome lines, without personalities, and while our campaign may be aggressive it is unavoidable, and has been forced upon us by conditions."

By Mr. GROSVENOR:

Q. I show you an article in the Show World of March 21st, 1908, at page 4, entitled, "Film Magnates in Chicago

Conference. Edison Company Issues Important Statement. Leading Motion View Men Discuss Great Moving Picture Controversy. Strong Views Expressed by Frank L. Dyer, General Counsel for the Edison Manufacturing Co., and J. A. Berst, American Manager for Pathe Freres, of Paris." 1

Q. Have you read it? A. Yes, sir; I have read the most of it.

Q. This article begins: "An important conference was held at the Auditorium Annex, Chicago, by representatives of the Edison Manufacturing Company, and manufacturers who are operating under the Edison licenses, last week. Among those who participated in the deliberations were William E. Gilmore, Vice-President and General Manager of the Edison Manufacturing Co. of Orange, N. J.; J. A. Berst, American Manager of Pathe Freres, Paris; W. N. Selig, President of the Selig Polyscope Co., Chicago; George K. Spoor, President of the Essanay Co., Chicago, and resident members of the Film Service Association." Were you present at that conference? A. I think I was. I don't know as to that particular conference, but we met those people at that time. 2

Q. The article continues: "Frank L. Dyer, of New York, general counsel for the Edison Manufacturing Co., issued the following statement regarding the controversy over the patent situation in the moving picture business." Do you recall such a statement being discussed at that conference? A. No, sir; I do not. There were things taken up here and there, but I do not recall anything, particularly. 3

Q. Do you recall statements made by Mr. Dyer respecting the value of the Latham patent? A. No, sir; I do not.

MR. GROSVENOR: I offer that article in evidence.

The article offered is received in evidence and marked "Petitioner's Exhibit No. 255, and is as follows: 4

1

Petitioner's Exhibit No. 255.**FILM MAGNATES IN CHICAGO CONFERENCE; EDISON CO. ISSUES IMPORTANT STATEMENT.**

Leading Motion View Men Discuss Great Moving Picture Controversy—Strong Views Expressed by Frank L.

Dyer, General Counsel for the Edison Manufacturing Co. and J. A. Berst, American Manager for Pathe Freres of Paris.

- 2 An important conference was held at the Auditorium Annex, Chicago, by representatives of the Edison Manufacturing Company and manufacturers who are operating under the Edison licenses, last week.

Among those who participated in the deliberations were William E. Gilmore, vice-president and general manager of the Edison Manufacturing Co., of Orange, N. J.; J. A. Berst, American manager of Pathe Freres, Paris; W. N. Selig, president of the Selig Polyscope Co., Chicago; George K. Spoor, president of the Essanay Co., Chicago, and resident members of the Film Service Association.

- 3 Frank L. Dyer, of New York, general counsel for the Edison Manufacturing Co., issued the following statement regarding the controversy over the patent situation in the moving picture business:

4 "As is well known, licenses under the Edison Patents have been taken out by the principal manufacturers of this country. The patents have been recognized by these manufacturers as dominating the art and royalties under them are being paid. The claim has been advanced by the Biograph company that they can operate independently of the Edison patents because the Court of Appeals in New York decided that an early form of camera in which unevenly spaced pictures were taken, was not an infringement of one of those patents. The suit against the Biography company did not involve the Edison film patent which covers all modern moving pictures, and in my opinion is infringed by all pictures manufactured in this country or imported from abroad. The American manufacturers who have signified their willingness to pay royalties under the Edison film patent would certainly not do so if they had not believed that the Edison patents were valid and had to be recognized.

Suits for Infringement Filed.

1

"Suits have already been brought in Chicago against George Kleine and the Kleine Optical company for infringements of the Edison film patent. The infringing films against which these suits are directed are imported motion pictures made by Gaumont and others and American pictures manufactured by the Biograph company. These suits will be pressed with the greatest vigor and brought on to hearing at the earliest possible moment. I confidently expect that injunctions will be secured by which further unlawful importation of these pictures will be prevented, as well as further manufacture of infringing films by the Biograph company.

2

Will Sue Film Exchanges.

"Of course, should such injunctions be granted, there would necessarily be a very large claim for profits and damages. We also purpose to bring suit against all the film exchanges in Chicago and elsewhere who may now be handling or may in the past have handled these infringing films, both foreign and otherwise; as well as against all exhibitors who may use them. Evidence is now being secured as to these infringing exchanges and exhibitors, and upon my return to New York I intend to promptly commence additional suits against them. I have been amused to note in the public advertisements that both Mr. Kleine and Biograph company have agreed to protect all exhibitors or film exchanges handling their films under the 'Biograph patents.' I am perfectly familiar with all the patents which have been granted to the Biograph company, but I do not know of any patent under which any protection whatever could be given. If there is to be such protection, I suggest that any exchanges or exhibitors who may decide to continue the infringing business might be protected more effectively in other ways than by mere newspaper statements.

3

4

Anent the Latham Patent.

"Some talk has been indulged in as to the so-called Latham patent on which the Edison company was recently sued in Trenton by the Biograph company. This patent has nothing to do with moving picture films, but relates to a detail in the construction of projecting machines. Such

- 1 exhibitors as may use Edison projecting machines, will be fully protected by my company which will undertake the defence of all suits that may be brought against them for the use of such machines and will pay all damages that may be recovered, provided, of course, the Edison company is given control of such suits.

Regards Latham Patent a Joke.

- "I do not look upon the Latham patent as a serious thing, and in fact it is nothing but a joke in the business.
2 Ever since its issue in 1902, my company has been importuned to purchase it, but I have always regarded it as so unimportant as not to warrant serious consideration.

"Two things, however, may be taken seriously by the public: First: The Edison company proposes to the utmost of its ability to assert its right to the Edison patents and to prosecute all infringers, wherever they may be located.

- "Second: The Edison company stands behind all its licensees and will see that they are fully protected in any patent suits which may be brought against them for using
3 licensed motion pictures made by any one of its regular licensees."

Mr. Dyer Discusses Situation.

In an interview with a SHOW WORLD representative, Mr. Dyer said:

- "I feel sure that the situation will turn out satisfactorily to the Edison patents, and that they will be recognized by every one very soon. The patents have been recognized by the eight largest manufacturers in this country,
4 who have agreed to pay royalties to the Edison Manufacturing company, under them, and those manufacturers comprise substantially the entire output. We have, therefore, only to deal with imported films.

"The important Edison patent covers the film itself, so that anyone either making films in this country or importing those films from abroad, or selling them, or using them in this country, infringes that patent.

"Suits have been brought against Mr. George Kleine and the Kleine Optical company, and the subpoena in the suit

was served on Friday or Saturday of last week. Those suits are to be pushed as rapidly as possible, and I expect that injunctions will be granted. Of course, the suits involve the usual prayers for damages and accounting, which I imagine will be considerable.

Will Prosecute Infringements.

"Every film exchange not recognizing the Edison patents, and every exhibitor who exhibits infringing films infringes the Edison patents just as effectively as the man who makes films in this country, or the man who imports them, and suits can be brought just as effectively against them as against the manufacturer or importer. Evidence is now being secured against the exhibitors in this city who use infringing films, and upon my return to New York I expect to start suits against them. Those suits, in turn, will be pressed vigorously. In fact, we propose to sue everybody who infringes those patents. We intend to have them recognized so that the patents will occupy the position that we think they are entitled to occupy. They stand at the very foundation of the business.

"We have retained in this city the well known law firm of Offield, Towle & Linthicum, who stand among the leaders of the patent bar of the country. Everything possible will be done to expedite the case. In the meantime exhibitors using infringing films are simply piling up trouble for themselves, because there has to be an accounting at the end for every cent they make. We are entitled to every cent of the profits that they make, and have made, within the limits of the statute of limitations, which extends back about six years, and to this end we intend to bring suits against certain exhibitors.

"It is the indicated policy of the Edison company that in the case of all exchanges and exhibitors who become licensees under the Edison patents, and who agree to use licensed films exclusively from now on, that all past damages and profits will be waived, and to those people the Edison company is willing to forego any claim it has against them.

Patentee May Grant Licenses.

"I do not know whether anything has been said in Chi-

1 cago about the so-called 'trust' features, but if it has been
there is not the slightest doubt about the position of the
Edison company. The Supreme Court of the United States,
and, particularly, the Circuit Court of Appeals in Chicago,
have recognized that it is a perfectly proper thing for a
patentee to grant licenses under his patents, and to insist
in those licenses that the patented article shall be sold at
a fixed price—which is one of the conditions of our license.

2 "Some people have said in the papers that we organized
an enormous moving picture trust in violation of the
Sherman anti-trust act. In fact, I saw some reference to
the possibility of referring an investigation of this matter
to the federal authorities.

3 "The courts have uniformly sustained agreements of this
sort. Of course, where two or more competing manufacturers
combine to control the price of an article of ordinary
commerce, or of one of the necessities of life, such a combination
would be in restraint of trade, and if that article were
passed into interstate commerce it would be a combination
in restraint of trade, under the Sherman act. But in the
case of a patented article the patent is a monopoly granted
by the government and recognized by the Constitution, and
if the patentee has the right to absolutely control and
restrict the sale of the article himself he obviously has
the right to say to a licensee, 'I will give you a license on
this patent with the understanding that you must sell the
patented article at so much a piece,' or, 'You must sell it
only in the City of Chicago, or subject to any other reasonable
condition.' That is all we have done here, and that principle
has been recognized for the last fifty years. Recently the
courts have had occasion to pass upon that phase of the
case in connection with the anti-trust legislation, and
4 it has been held that an arrangement of that sort is not in
restraint or violation of the Sherman act.

Edison Patent is Sweeping.

"The Edison company owns a patent which covers every
motion picture film that is made in this country, or imported
from abroad.

"The Biograph company, so far as I know, has no patent
that covers a film at all, but their patents are limited solely
to little, trivial details in the machine for taking pictures, or

machines for exhibiting pictures, and those details are not used at the present time, so that their claim that they are granting licenses under their patents amounts to nothing at all. They have no patents under which they could grant licenses which would be of value to the exhibitor or exchange."

J. A. Berst Gives His Views.

J. A. Berst, American manager for Pathe Freres, of Paris, was asked by a representative of THE SHOW WORLD his reason for accepting a license from the Edison Manufacturing company, and why he recognized the validity of the Edison claims.

"That was a very important matter for us to decide," said Mr. Berst, "and there is a very good reason for our affiliation with the Edison interests rather than on the other side.

"Before the patent on the camera was sustained by the courts our position in this country was about the same as others. We felt that we were free to sell pictures. When the patent was sustained it changed the entire situation, because we wanted to print and make films in this country, and we started a very important plant in New Jersey, which is now working.

Cannot Use the Biograph Camera.

"At the same time the court decided on that patent, it also held that the Biograph Co. camera was not an infringement. Apparently things seemed equal, but not to us, for we knew perfectly well that we could not make a good film with the Biograph camera. It would have been impossible to make a certain special trick film with their camera. We had to employ our camera, and it was an infringement of the Edison patent.

"Another reason was the fact that we were involved in litigation with the Edison company on the film patent, and that suit has not yet been terminated. We were represented by Kerr, Page & Cooper, who were the attorneys for the Biograph company, and were informed by these lawyers that if the Edison company was inclined to push this suit very hard against us it could obtain a judgment in the higher courts within a year.

- 1 "The Edison company had already demonstrated the strength of their patents in the Court of Appeals which sustained the camera patent, and we were afraid to contest the validity of their film patent, for if it was sustained it would have barred us from America, as the Edison company would no doubt have exacted such heavy royalties that we could not afford to fight them.

Loop Patent Not Important.

- 2 "A third reason was the claim of the Biograph company on the loop. We never thought much of this patent because it is dated 1896, and before that time we were making machines, and selling and using them, and all had the loop. Furthermore, during the past two years we have been using machines equipped with a little device which obviates the loop, and permits of any length film being run. It would cost about a dollar to apply the device to all projecting machines used in this country and if the Biograph patent on the Latham loop were sustained it would not trouble us longer than the time it would take to supply every exhibitor with this special device. We have used it for two years, and it works just as good as a sprocket with a loop.
- 3

- 4 "The next reason was that, after looking carefully into the matter, we found arrayed on the side of Edison all the manufacturers in this country furnishing films on which the renter and exhibitor could rely—the Essanay Co., Vitagraph Co., Kalem Co., George Melies, S. Lubin, and the Selig Polyscope Co., who were practically the only ones furnishing films in this country. On the other side there was practically none known outside of Gaumont and Urban, and even among them were French concerns of whom we had never heard, notwithstanding the fact that I have been in the business for seven years. They probably are new concerns, and if you will look back you will find that the big concerns are the very oldest. The new companies do not amount to much.

In Touch With Customers.

"Furthermore, we were in constant touch with our customers, who informed us that they did not want English

films. What is wanted are good films, such as Pathe, Edison, Vitagraph, Selig, Essanay, etc. For this reason we saw that if we adhered to Edison we would have everything on our side, including patent rights and good films, and on the other side would be nothing.

"Our sales for the past two months have exceeded the same period since we have been in business, and from present indications the year's business will be phenomenal.

"Under our arrangements the manufacturers will make more money, the renters will make more, and the exhibitor will more than share in the prosperity, as he will receive better films which will increase his patronage enormously."

By Mr. GROSVENOR:

Q. I show you an article in the issue of the Show World of March 28, 1908, page 9, entitled "Edison Fires Second Gun in Film Battle. Injunction Suits Instituted Against Owners of Moving Theatres in Chicago. George Kleine Discusses Litigation." Please read the first paragraph in that article. A. I have read the most of it.

Q. This article begins: "The Edison Manufacturing Company of Orange, N. J., fired its second gun in the great film battle instituted in Chicago, by filing injunction suits on March 16, in the United States Circuit Court against seven owners of moving picture theatres. The defendants are William Marks, Joseph T. Dorgan, Christ Rohlandson, John H. Ferris, John Furis, Abe Mills and D. E. Mulvey. The bills contain the same allegations as in the suits filed against George Kleine, and the Kleine Optical Company, the complainant asserting that it is the owner of letters patent covering films, and that the defendants are making, using and selling infringing films. The complainant prays for an injunction, restraining the defendants from further handling such films, and for an accounting for all the profits from such alleged infringement." Does that article refresh your recollection as to the bringing of these suits about that time, in Chicago, against the motion picture theatres?

Mr. KINGSLEY: I object to the question as incompetent, immaterial, and irrelevant. I object to the form of the question, on the ground that it con-

- 1 tains a preface and preamble which was previously supplied to the witness to refresh his recollection, and if his recollection was refreshed, a question could be asked him without reading this upon the record, and it is, therefore, put upon the record for an ulterior purpose, and not for the purpose of refreshing the witness' mind at all.

Mr. GROSVENOR: Repeat the question, please.

The question was repeated by the Examiner as follows:

- 2 “Q. Does that article refresh your recollection as to the bringing of these suits about that time, in Chicago, against the motion picture theatres?”

The Witness: I knew suits, or something of that sort, were brought against certain exhibitors there.

By Mr. GROSVENOR:

Q. About that time? A. Somewhere.

- 3 Q. And this was some of the litigation you had in mind in your testimony on direct examination? A. No, I didn't have this particular litigation in mind. I had in mind the litigation as a whole, as I remember it, right along.

Mr. GROSVENOR: I offer that article in evidence.

The article offered is received in evidence and marked "Petitioner's Exhibit No. 256, and is as follows:

Petitioner's Exhibit No. 256.

EDISON FIRES SECOND GUN IN FILM BATTLE.

- 4 *Injunction Suits Instituted Against Owners of Moving Theatres in Chicago—George Kleine Discusses Litigation.*

The Edison Manufacturing Company, of Orange, N. J., fired its second gun in the great film battle instituted in Chicago by filing injunction suits on March 16 in the United States Circuit Court against seven owners of moving picture theatres. The defendants are William Marks, Joseph T. Dorgan, Christ Rohlandson, John Ferris, John Furla, Abe Mills and D. E. Mulvey.

The bills contain the same allegations as in the suits filed against George Kleine and the Kleine Optical company, the complainant asserting that it is the owner of letters patent covering films, and that the defendants are making, using and selling infringing films. The complainant prays for an injunction restraining the defendants from further handling such films and for an accounting for all the profits from such alleged infringement.

George Kleine Talks of Suits.

In an interview with a representative of THE SHOW WORLD, George Kleine, president of the Kleine Optical company, said regarding the filing of the suits:

"The object of the Edison Manufacturing company in bringing suits against owners of theatres is obvious to any one familiar with such practices. This mode of procedure is purely commercial, and does not strengthen any pretensions to patent rights, and the purpose must be to annoy these men who are using films supplied by independent exchanges, rather than to prosecute the suits upon their merits.

"Every legitimate object along the lines of vindication of the alleged Edison patent claims could be realized and adjudicated by the prosecution of one suit against some defendant whose standing is material and important in the trade. A litigant does not secure a better footing in a court of justice by the promiscuous institution of suits, and the validity of the alleged patent claims will not be bolstered up by the number of suits filed.

"This filing of numerous suits covering the same subject matter makes it evident that they are attempting to drive users of independent films into the Edison circle by questionable methods.

"Most men dislike law suits, but there is a characteristic feeling of stubbornness in the average American which prompts him to resent such an attempt to compel him to violate his principles of independence.

Proceeding is Commercial.

"I am firmly convinced that the Edison Manufacturing Co. is not imbued with a spirit of confidence in its claims covering films, and that this entire proceeding is purely com-

1 mercial, having for its object the accomplishment of the same result as if it really owned a valid patent.

2 “They studiously ignore our challenge to show us wherein their alleged patent has been strengthened, or in what manner its legality has been established, since the decision of the United States Circuit Court of Appeals was handed down on March 10, 1902. They have not answered the dictum of the highest court in the United States that passed upon the matter. They prayed an appeal to the Supreme Court of the United States, which refused to interfere, and the decision therefore stands as the final adjudication of the highest court of the United States that would entertain the action. The Court said at that time:

3 “It is obvious that Mr. Edison was not a pioneer in the large sense of the term, or in the more limited sense in which he would have been if he had also invented the film. He was not the inventor of the film. He was not the first inventor of apparatus capable of producing suitable negatives taken from practically a single point of view, in single line sequence, upon a film like his, and embodying the same general means of rotating drums and shutters, for bringing the sensitized surface across the lens and exposing successive portions of it in rapid succession.

Attempt to Create Monopoly.

4 “The fifth claim of the patent is obviously an attempt by the patentee to obtain a monopoly of the product of the apparatus described in the patent, so that in the event it should turn out that his apparatus is not patentable, or the product could be made by apparatus not infringing his, he could nevertheless enjoy the exclusive right of making it.’ (This refers to the film claim.)

“The burden is on the Edison Manufacturing Co. to make the court reverse itself, and I do not know of an instance in which a lower United States Court, in a similar case, where the decision of the upper court shows the most profound investigation and unanimity of opinion, has not followed the upper court; and I do not believe that the attorneys for the Edison Manufacturing Co. can cite a single instance of a parallel case in which such procedure was had.

“I have previously shown that the rights of the Biograph Co. under the Latham patent are stronger by virtue of their

history than those of the Edison film patent, notwithstanding which no action has yet been taken against users of films which infringe this patent. This patent covers every camera and projecting machine that uses a loop, and I consider the statement recently made by one of Edison's licensees, that he can equip any machine within a short time with an attachment which would obviate the use of the loop, is born of the necessity of the present situation rather than of faith in the alleged device. If such a device really exists it would probably infringe the Latham patent.

1

Biograph and Latham Patents.

2

"If the courts declare the Latham patents valid it will be within the power of the Biograph Co. to dictate how the machines may be used which involve this patent. They will have the right to declare whose films may be projected, and the use of any films not licensed by the Biograph Co. with a machine embodying the Latham patent will be an infringement, and make the user liable to the Biograph Co. for damages.

"The Biograph Co., however, wishing to pursue a liberal policy, and seeking to avoid the appearance of intimidation, has brought no action against exhibitors, but has gone to the fountain head and summoned the Edison Manufacturing Co. into court for violation of the Latham patent. I am not in a position to speak for the Biograph Co. as to its course in the near future, but considering the events which have taken place recently it would be the natural sequence to bring suits against users of films licensed by the Edison Mfg. Co. for violation of the Latham patent.

3

"It is our policy to protect to the utmost every user of films which we sell or rent, and while we do not use sonorous and bombastic language, threatening innumerable law suits against infringers, wherever found, the claims under the Latham patent will be pushed to a speedy decision, and if successful the Biograph Co. will then be in a position to secure injunctions instanter against anybody who uses films of any make upon a machine or camera which infringes its patent rights. Inasmuch as this question can be adjudicated in the one case against the Edison Manufacturing Co., it has not hitherto been thought advisable or just to begin innumerable suits against exhibitors.

4

1

Film Service Committeeman Resigns.

"I am informed that a member of the executive committee of the Film Service Association, finding his position irksome, and being hampered by the domination of the manufacturers licensed by Edison, has resigned as a committeeman and severed all connection with the Film Service Association, as well as the manufacturers affiliated therewith.

2

"The statement has been made by an Edison licensee that Messrs. Kerr, Page & Cooper, who represented his company in previous litigation with Edison, had advised him that if Edison cared to push the suit vigorously a judgment could be obtained within a year. As this may give rise to the impression that our attorneys respected the validity of the Edison claims, I took up the matter with them, and quote from their reply as follows: 'We never advised that the Edison film patent was valid, and we never considered it valid.'

Importance of Opinion.

3

"Those who are familiar with the history of moving picture patents will appreciate the importance of such an opinion, as Kerr, Page & Cooper are, in my opinion, the ablest and best informed attorneys in America on motography, and, as the attorneys for the Biograph Co., have defeated Edison in every legal controversy between the two companies concerning moving picture cameras or film.

4

"It is worthy of note here that in the second suit brought by Edison upon his reissue of the film patent these attorneys regarded the legal status of the claim so lightly that they did not interpose a defense, but entered a demurrer, which in legal parlance means that even if they admitted all the facts set forth by the complainant, he has no legal standing; and Edison withdrew his suit before a decision could be rendered.

"Users of our films will be fully protected, and any exhibitor who is sued by Edison will be defended free of charge to himself. The Biograph Co. has assumed the defense of the various suits that are pending against owners of nickel-odions."

Seaver Discusses Litigation.

V. C. Seaver, of the Moving Picture Theater Protective

Association, and manager of the Independent Film Exchange, Chicago, said: 1

"The filing of suits by the Edison Manufacturing Co. will not secure the results they hope for. We will stand firm, and have implicit faith in our legal fortifications. The Independent flag will continue to fly and will not be hauled down at a few pyrotechnic displays or bursts of oratory. We do not think the Edison Manufacturing Co. has a valid claim, and must be shown a court decision in its favor before we take alarm.

"In fact, both myself and Mr. W. R. Cozart, who have promoted the Protective Association, and are using Independent films, feel that we have been slighted by not being sued by Edison. We cannot understand why they single out Independent exhibitors here and there, and overlook us. We regard the matter as a huge joke, and would like to be active participants instead of onlookers, and as the last laugh will be on Edison we would like an incentive to join in the mirth." 2

BERST TALKS OF TRIP.

Tell of Visit to Chicago and Work Accomplished.

3

J. A. Berst, American manager for Pathe Freres, after a visit of several days in Chicago, returned to New York last week. While in Chicago Mr. Berst inaugurated an innovation in the moving picture industry by advertising in the daily papers. THE SHOW WORLD is enabled to present an exclusive statement regarding Mr. Berst's visit to Chicago. He says:

"I returned from Chicago last week and am satisfied with the conditions of our trade in the middle west. Everything seems to improve and the exchanges are beginning to feel the advantages of the Association. A few, it is true, still complain, but not as they did before the last convention, and the majority are kicking more against their competitors, who are not living up to the rules of the Association, than anything else. 4

"I also found that the nickelodions are giving better performances and that fewer worn-out pictures are shown;

- 1 if these were the only improvements brought about by the Association, I would consider them of value, and the public will undoubtedly appreciate them.

Merely a Coincidence.

- 2 "It is merely a coincidence that W. E. Gilmore and Frank L. Dyer, both of the Edison Company, made the trip to Chicago at the same time. Our presence was quickly heralded and created quite a panic among the infringers of the Edison patents. All sorts of false reports were circulated during my short stay in the western city, and a representative of the foreign manufacturers even remarked that he had to work every night right up to two o'clock to prepare statements for the morning press.

- 3 "I admit that the opposition has won out in two different ways. First, the foreign manufacturers have been successful in getting rid in a short time of nearly the whole enormous quantity of old films, considered as valueless, that have been on their shelves for the past year. I do not know how the 'Independents' (I suppose they took this name as they realized that they cannot depend on anything) will like this. In fact, it would surprise me very much if they stood for this sort of business very long, as I know there are many intelligent men among them. The second success of the opposition is to have permitted each customer to select what pleases him and not to oblige anyone to give a standing order. But these clever foreign manufacturers omitted to add that it would have been impossible for them to obtain standing orders from their customers, for the simple reason that having combined together they would compel their customers to take the whole lot; I doubt whether such a customer could be found.

4 "Besides the two successes mentioned, the foreign manufacturers enjoy also another advantage, which must not be overlooked. They rent their lucky customers all the films that remain on their hands on account of being too poor a quality to sell. (In fact, I agree with them that this was the only resource when standing orders were not enforced.)

"These gentlemen of the opposition are really very clever; they even revive old patents.

“But we must not pay too much attention to the jokes of the opposition; let us go to work and continue to make good films. You, renters, give better service to your customers, give them full satisfaction and make more money. The only way, however, to arrive at this result is to faithfully live up to the rules of your Association.”

By Mr. GROSVENOR:

Q. The exchanges that formed the Film Service Association took out so-called license agreements under the film patent after February, 1908? A. I think they did, with the Edison Company.

Q. And the Kleine rental exchanges refused to take out those agreements, and left the Association at that time? A. The Kleine Optical Company did not take out a license. Whether they refused, or not, I don't know.

Q. As a matter of fact, all the people who continued in the Film Service Association did take out those licenses? A. I think maybe they did.

Q. In those exchange agreements, which you call licenses, were incorporated many of those provisions which you regarded for the best interests of the rental exchanges, and in regard to which you testified on direct examination, to wit, sub-renting, the return of films, etc.? A. I think it was, yes, sir.

Q. I show you an article in the Show World of April 25th, 1908, page 22, entitled, “Important Bulletin of Film Association.” Please read that. A. I have read it.

Q. This purports to be a bulletin issued by the Film Service Association. Do you recall the Association issuing a bulletin of that description? A. We used to issue bulletins frequently. I presume that is one of them. I recall it as such.

Q. You were one of the members of the Executive Committee who adopted those bulletins? A. Yes, sir.

Q. And authorized their issuance? A. I was.

Mr. GROSVENOR: I ask that that be copied into the record.

Mr. KINGSLEY: Objected to, as incompetent, irrelevant and not the best evidence.

1 Mr. KINGSLEY: I also object to it on the ground that it is not binding on any of these defendants, the witness himself having stated that these defendants were not members of the Film Service Association.

The article offered is received in evidence and is marked "Petitioner's Exhibit No. 257," and is as follows:

Petitioner's Exhibit No. 257.

IMPORTANT BULLETIN OF FILM ASSOCIATION.

2 [*The Show World Special News Service.*]

Secretary D. MacDonald, of the Film Service Association, has issued the following bulletin:

3 "The Executive Committee of the Film Service Association held a meeting in New York City on April 17 and 18, at which times replies to Bulletin No. 12, which asked for an expression of opinions by members of the Association on the minimum rental schedule, were taken up. Of 110 memberships, replies from which have been received, 90 had expressed themselves in favor of maintaining the schedule and 20 had asked that it be withdrawn.

"Of the 20 who wished the schedule withdrawn, a number stated that they were in favor of the schedule if it could be enforced, and therefore had been a hardship on those members who were strictly living up to it.

4 "The Committee investigated all of the complaints which had been sent in to the Secretary's office, and came to the conclusion that while in the majority of cases the schedule was being lived up to, there were many instances where members were cutting prices, permitting their films to be sub-rented, and in some cases their films were getting into the hands of Exchanges who were not members of our Association and were renting unlicensed films. The Committee, after careful consideration, was satisfied, that, while in some of these cases the action was deliberate, that there are many cases where members through carelessness or failure to properly supervise their business, were permitting their employes to break the contracts which the Exchanges have with the manufacturers.

Edison Co. to Enforce Contracts.

1

"The Edison Manufacturing Company, the owners of the patents under which the members of our Association are licensed, assumes the entire responsibility for enforcing the contracts between licensed manufacturers and our members under which we received licensed film. The Committee conferred with the Edison representatives and received every assurance that this company would co-operate with the Committee in seeing that contracts between the exchanges and the manufacturers were uniformly enforced so that no exchange would have an advantage over another. It was agreed that any evidence which was submitted to the Secretary of the Association should be referred to the Edison Company for action, and that every complaint made should be thoroughly investigated, for which purpose the necessary staff should be retained.

2

"For the present the efforts of the Executive Committee and the Edison Manufacturing Company will be devoted to investigating complaints and taking action in regard to any cases which will uphold the following propositions which are the basis of the contract between the Licensed Manufacturers and the Exchanges:

3

"I. Prevent Licensed Films from getting into the hands of Exchanges outside of our Association.

"II. Prevent Sub-renting of Licensed Film.

"III. Prevent the Rental of Licensed Film Below the Minimum Rental Schedule.

New York and Chicago Offices.

"In order to invite the active co-operation of all the members of the Association, and in order to systematize the manner of handling complaints, collections of accounts, etc., the Executive Committee has divided the United States into two parts. All complaints, collections, etc., from members of the Association from Pittsburg, Pa., and east of that point should be sent to the office of the Secretary in New York.

4

"Within a short time an Executive Committee will open a second office for the Association in Chicago in charge of an Assistant Secretary, to which office will be referred all complaints, collections, etc., from members west of Pitts-

- 1 burg. By this means the Executive Committee expects to effect a great saving of time and give to members in the west an office near at hand with which they can take up directly all matters in which they are interested.

Exhibitors Using Unlicensed Film.

- “All members of the Association will be furnished with information blanks upon which may be reported information regarding the exhibition of unlicensed film, and as soon as these blanks are received, members are requested to obtain this information as to cases in their localities.

- 2 “The Edison Manufacturing Company propose to bring suits wherever they find violations of their patents.

Advertising.

“Members in advertising in the trade papers should always mention the fact in the advertisement that they are members of the Film Service Association.

Short Lengths.

- 3 “The Executive Committee has taken up with the manufacturers the question of short lengths. The Committee requests information as to what the experiences of members may be in this respect, and advises each member to get a measuring machine, which can be purchased for a small amount, and measure films, reporting where they measure less than the number of feet billed at the time they are delivered. The manufacturer is allowed a variation of 2 per cent.; anything over that should be reported.

- 4 “The manufacturers have been requested by the Executive Committee, in order to assist their customers, to place upon the label upon the box containing the film the name of the subject, the number of actual feet contained in the box, and the character of the film, whether comic, tragic, etc.”

Members of the Committee present were: President, J. B. Clark; Treasurers, P. L. Waters, F. C. Aiken, Wm. H. Swanson, F. J. Howard. Secretary D. MacDonald was also present.

By Mr. GROSVENOR:

1

Q. I show you an article in the Show World of May 2d, 1908, at page 13, entitled, "Film Service Association Announces a Victory in Edison Litigation." Please read that article. Have you read the article? A. I have.

Q. This article begins: "New York, April 27.—The Film Service Association"—

Mr. KINGSLEY: I suggest now that you ask him if it refreshes his recollection.

Mr. GROSVENOR: "The Film Service Association has issued a bulletin to the moving picture trade announcing the service of"—

2

Mr. KINGSLEY: I object to the form of the question.

Mr. GROSVENOR: "—papers in the suit of the Edison Manufacturing Company against Christ Rohlandson, and the issuance of a decree in the United States Circuit Court for the Northern District of Illinois, in Chicago, favorable to the plaintiff corporation in this particular action. The bulletin, which announces the determination of the Edison Company to press all suits filed against certain defendants for alleged infringements of patents, reads as follows." Did the Film Service Association issue a bulletin as stated here, to the trade, announcing the result of the suit of the Edison Company against this man Christ Rohlandson, in Chicago?

3

Mr. KINGSLEY: I object to the question as improper in form, and improper in substance, not the proper method of refreshing the recollection of the witness.

4

The Witness: I don't recall that, particularly. The bulletin. I presume it was issued. They issued a great many bulletins.

Mr. KINGSLEY: I move to strike out the answer, on the ground that the presumption of the witness is not evidence.

1 By Mr. GROSVENOR:

Q. Did you issue a bulletin to the trade announcing the result of the suit of the Edison Company against this man Rohlandson in Chicago? A. I am not positive that we did. We may have done so.

Q. The balance of the article appears to give a copy of such a bulletin. Please examine that bulletin and state whether or not that is a copy of the bulletin issued by your Association. A. I think it is.

2 Mr. GROSVENOR: I ask that that bulletin be copied; that is, what has been identified by the witness as a bulletin—the part of that article beginning “To exhibitors of and dealers in moving picture films.”

The Witness: Mr. Grosvenor, if you have a copy of the original bulletin, I could identify it positively, but I could not positively identify that as being a correct copy of the bulletin.

3 Mr. CALDWELL: The receipt of that bulletin in evidence is objected to on the ground that the witness states that he cannot identify it.

Mr. GROSVENOR: He has not so stated.

Mr. KINGSLEY: I object to the receipt of the bulletin in evidence, on the ground that it is incompetent, immaterial and irrelevant; not the best evidence, not binding upon these defendants; upon the further ground that it has not been sufficiently and properly identified by the witness, and that he has had no opportunity to compare it with the original, and does not know whether it is a correct copy.

4

By Mr. GROSVENOR:

Q. Witness, you did issue a bulletin which contained an exact copy of the decree by Judge Kohlsaas against that exhibitor, is that not the fact? A. I think we did.

Q. Now, look at that article and see whether that copy of the bulletin appearing there does not contain a copy of an injunction decreed against Christ Rohlandson?

Mr. KINGSLEY: I object to the form of the question, as it calls for a conclusion manifestly beyond the competency and knowledge of the witness.

1

The Witness: Presumably so, yes.

Mr. KINGSLEY: I move to strike out the answer on the ground that it is a mere presumption of the witness.

By Mr. GROSVENOR:

2

Q. In your opinion, that is a copy of the Film Service Association bulletin, which was issued by the Association, relating to that suit, and the decree entered in that suit?

Mr. CALDWELL: Objected to as calling for the opinion of the witness.

The Witness: As I have just stated, a bulletin bearing on this, I think, was issued, and this, no doubt, is a copy of it, although I could not positively identify it, without seeing the original bulletin.

3

The paper offered is received in evidence and is marked "Petitioner's Exhibit No. 258," and the same is as follows:

Petitioners Exhibit No. 258.

FILM ASSOCIATION ANNOUNCES VICTORY IN EDISON LITIGATION.

New York, April 27.—The Film Service Association has issued a bulletin to the moving picture trade announcing the service of papers in the suit of the Edison Manufacturing Company against Christ Rolandson and the issuance of a decree in the United Circuit Court for the Northern District of Illinois in Chicago, favorable to the plaintiff corporation, in this particular action.

4

The bulletin which announces the determination of the Edison Company to press all suits filed against certain defendants for alleged infringements of patents, reads as follows:

1

Notice to the Trade.

To Exhibitors of and Dealers in Moving Picture Films:—
The Edison Manufacturing Company, as now generally well known, is the owner of United States Letters Patent Reissue No. 12,192, granted to Thomas A. Edison January 12, 1904. This patent covers the manufacture, sale and use of all practical moving picture films. It is the intention of the company to protect its rights under this patent in every possible manner, and to that end it has instituted suits against all makers and users of unlicensed films where-
2 ever it has received information as to any infringement of the patent.

One of these suits, that of Edison Manufacturing Company *v.* Christ Rolandson, in which the bill of complaint was filed March 16, 1908, has been determined favorably to the Edison Manufacturing Company, the complainant in the suit, and a decree has just been entered in the Circuit Court of Illinois, Eastern Division.

Court Issues Decree.

3 After reciting that the defendant had been properly served with process, and had caused his appearance to be entered, the decree reads:

First—That all the material allegations of the said bill of complaint are true.

4 Second—That the Reissue Letters Patent of the United States, No. 12,192, dated the 12th day of January, 1904, are good and valid Letters Patent; that the complainant is the owner of the same and of all rights of action for profits and damages arising out of the infringement thereof; that the defendant herein prior to the filing of the bill and within the period of six years last past, and since the 12th day of January, 1904, infringed upon the said Letters Patent and upon the rights of the complainant thereunder by using, within this District, moving picture films containing and embodying the inventions covered by the said Reissued Letters Patent, without the license or authority of the owners thereof, and to the damage of the complainant.

Defendants are Enjoined.

It is further ordered, adjudged and decreed, and the

Court doth hereby order, adjudge and decree, that the said defendant, his agents, attorneys, servants, and workmen be, and they and each of them are hereby enjoined from the further infringement of the said Reissued Letters Patent No. 12,192 and the rights of the complainant therein and thereunder, and particularly from making, using or selling without the authority of the complainant any moving picture films containing or embodying the improvements or inventions set forth in said Reissued Letters Patent, and covered by the claims thereof, or each or any of the said claims. And it appearing to the Court that the parties have agreed upon the damages and profits and that the defendant has paid the same to the complainant, and that the complainant has waived an accounting herein, this decree is made final, the defendant to pay the costs.

Suits Will be Pressed.

It is desired to call the attention of all moving picture buyers and exhibitors to this decree in order that every one shall be properly advised as to the probable outcome of the suits which have been or will be filed by the company against infringers, and of the intention of the company to press all suits to a conclusion as rapidly as possible.

The undersigned manufacturers are the only ones making moving picture films under the Edison Patents, and the purchase or use of films made by any other concern will necessarily render the purchaser or user liable to prosecution for infringement.

Edison Manufacturing Company, Orange, N. J.

Essanay Company, Chicago, Ill.

Kalem Company, New York, N. Y.

Siegmund Lubin, Philadelphia, Pa.

George Melies, New York, N. Y.

Pathe Freres, New York, N. Y.

Selig Polyscope Company, Chicago, Ill.

Vitagraph Company of America, New York, N. Y.

By Mr. GROSVENOR:

Q. After that bulletin was issued by the Association to the trade, is it not a fact that the Kleine Optical Company

- 1 applied to Judge Kohlsaas, or to the United States Court, in Chicago, for an injunction against the Edison Company, restraining the Edison Company from prosecuting any of the suits against the customers of the Kleine Optical Company? A. I think he did.

Mr. KINGSLEY: I object to the question as not proper cross examination.

By Mr. GROSVENOR:

- 2 Q. And the matter came up on a hearing before Judge Kohlsaas? A. Yes, sir.

Q. And you were present at the hearing? A. I was. Part of the time.

Q. Is that the hearing before Judge Kohlsaas to which you referred, earlier on cross examination to-day, as being the litigation which you had in mind, when you testified on direct examination? A. This is one of them.

- 3 Q. Mr. Aiken, I show you an article in the Show World of May 16th, 1908, at page 12, entitled, "Film Battle Waged in Court, Argument Heard, and War is Stayed by Agreement, Attorneys Consent to a Truce. Edison Company Not to File more Suits. By Hector J. Streyckmans. Petition of Kleine Optical Company Heard." Please read that article. Do you recall this Mr. Streyckmans, who appears to have been the author of the article, being present the day the matter was argued? A. I think he was.

Q. And he was the man who was interested in this Show World, was he not? A. He was connected with them in some way.

Q. Did you read the article at the time it was printed? A. I presume I did.

- 4 Q. And is it a fairly accurate account of what transpired on that day, in Court?

Mr. KINGSLEY: I object to the question as improper in form.

The Witness: I think it was.

Mr. CALDWELL: I object to it as not only improper in form, but thoroughly incompetent, for the reason

that the proper way of proving what transpired in Court is by the Court records. 1

Mr. KINGSLEY: I object to any attempt to prove the authenticity or correctness of any article that Hector J. Streyckmans has written, on the further ground that Streyckmans is a witness in this case, and was produced here by the petitioner, and if the article was to have been proved, it should have been proved out of the mouth of the witness Streyckmans, at the time he was on the stand.

Mr. GROSVENOR: I was not able to get the Show World at that time, although I made every effort to find a copy. 2

Mr. KINGSLEY: We will not waive any of our rights because of any failure you may have had in getting your evidence.

Mr. GROSVENOR: I will have this introduced in evidence, the entire article, the witness having identified it.

Mr. KINGSLEY: I object to it, as incompetent, immaterial and irrelevant, as hearsay, as not properly proved, as not the best evidence, as not binding upon these defendants, and as purporting to be the writings of a witness in this case who was not interrogated regarding the contents thereof. 3

The paper offered is received in evidence, and is marked "Petitioner's Exhibit No. 259," and is as follows:

Petitioner's Exhibit No. 259.

FILM BATTLE WAGED IN COURT; ARGUMENTS
HEARD AND WAR IS STAYED BY AGREEMENT.
ATTORNEYS CONSENT TO A TRUCE. 4

EDISON COMPANY NOT TO FILE MORE SUITS.

PETITION OF KLEINE OPTICAL COMPANY HEARD.

By HECTOR J. STREYCKMANS.

The film battle, which has been raging over the country

1 the past few months, was brought to a temporary halt by
the order of Judge Christian C. Kohlsaatt, of the United
States circuit court, Chicago, on April 28, setting the hear-
ing of the petition of the Kleine Optical Company for a tem-
porary injunction against the Edison Manufacturing Com-
pany for May 11, and in the meanwhile restraining the Edi-
son Manufacturing company and its licensees from prosecut-
ing the suits already brought against various theater owners
in America, or from instituting additional suits, and from
sending out statements to the press, or issuing circulars re-
2 garding the controversy.

On May 11 a truce was declared by the parties upon the
suggestion of the Court, and the above order was continued
in effect until the hearing of the main patent suit of Edison
Manufacturing company *v.* Kleine Optical company, it being
agreed, however, that the Edison Manufacturing company
was at liberty to bring suit against such of its licensees as
had violated their agreements.

Petition of Kleine Optical Company.

3 The matter came up on the petition of the Kleine Optical
company for an order of the court, until a final determina-
tion of the suit against it, restraining the Edison Manufac-
turing company from prosecuting any of the suits against
the customers of the Kleine Optical company, and from
bringing any further suits for alleged infringement, and
from threatening or asserting an intention to bring further
suits against such users or customers.

The petition sets forth that the Kleine Optical company
has been engaged in the business of dealing in photographic
films and moving picture machines and apparatus for more
than eleven years, and has unencumbered assets of over
4 \$200,000 in value, and has many hundreds of customers
using its films in Chicago and elsewhere, and that during the
year 1907 said customers purchased of the Kleine Optical
company approximately \$1,000,000 worth of films.

The petition then recites, in chronological order, the filing
of the various suits by the Edison Manufacturing company
against the Kleine Optical company, George Kleine, and
fifteen customers of the Kleine Optical company, located in
Illinois, Wisconsin and Ohio, and that the Edison Manu-
facturing company is threatening to bring a large number

of additional suits of the same character, against other customers of the Kleine Optical company. 1

Charges Made in Petition.

The petition then shows the claims of the Edison Manufacturing company on its reissued letters patent No. 12,192, in its bill of complaint, and of the answer of the Kleine Optical company (which were published in recent issues of THE SHOW WORLD), and charges that in November, 1904, a similar suit on such patents was filed by the Edison Manufacturing company against Eberhard Schneider in the United States circuit court for the southern district of New York, but the case had not been brought to a hearing, notwithstanding the fact that the said Schneider has continued throughout said period to manufacture and sell the films complained of in defiance of said patent. 2

The petition then states that the Edison Manufacturing company has given wide publicity to the suits it has filed in both the public and the trade press, and has publicly and repeatedly, in articles which it has caused to be published in the newspapers and trade papers, threatened to bring suits against all persons dealing in or using films supplied by the petitioner, for the purpose of harassing and annoying and intimidating the petitioner's customers. 3

Newspaper Articles Quoted.

Articles appearing in the various papers are then quoted, including the Chicago Journal, Chicago Tribune, Chicago Daily News, Chicago Record-Herald, THE SHOW WORLD, and others, and the charge is made that William E. Gilmore, general manager, and Frank L. Dyer, general counsel, of the Edison Manufacturing company, came to Chicago and caused themselves to be interviewed by representatives of the press, and supplied them with prepared articles and interviews intended to give publicity to said suits, and to the additional suits threatened to be brought. Long articles which appeared in THE SHOW WORLD are quoted, with the allegation that same were reproduced in the metropolitan papers. 4

The advertisement of the Edison Manufacturing company warning film users against alleged infringing films is then set forth, which appeared in THE SHOW WORLD and

1 other papers; also the advertisement of Pathe Freres, an Edison licensee, which contained the following language: "Don't fail to use Pathe Freres films, otherwise your business will be taken away from you."

2 The petition then alleges that the bills of complaint which the Edison Manufacturing company was filing and threatening to file were printed in large numbers, and that the Edison Manufacturing company is preparing and intending in pursuance of its advertised purpose to bring a large number of suits against petitioner's customers in various parts of the United States and will frighten and intimidate petitioner's customers and induce them to refrain from purchasing petitioner's goods, to the great irreparable and unlawful damage of petitioner.

Proceedings on April 28.

3 A strong array of legal talent represented the parties. Edward Rector, of Rector, Hibben & Davis, Chicago, and D. W. Cooper, of Kerr, Page & Cooper, New York, appeared for the Kleine Optical company, and Mr. Offield, of Offield, Towle & Linthicum, Chicago, for the Edison Manufacturing company. Among the interested spectators were F. C. Aiken, vice-president of the Film Service Association, and John Hardin, Chicago manager of the Edison Manufacturing company.

Mr. Offield asked that the matter be postponed, as the petition made charges against Mr. Dyer, and Mr. Dyer should have a chance to be heard personally on the subject; that they had been unable to connect with him and advise him of the hearing in time for him to reach Chicago.

4 Mr. Rector insisted that the matter was of grave importance, and should be heard; that Mr. Cooper had had no more notice than Mr. Dyer, and still he had arranged to be present; and that furthermore, since the serving of the notice and the rule of the court on the Edison Manufacturing company to show cause why a restraining order should not be entered, on April 24, the Edison Manufacturing company had gotten out and widely circulated a circular in reference to a consent decree which was entered by Judge Kohlsaat some weeks ago against one of the users, advertising it as an adjudication on the merits of the case, and sending it broadcast to intimidate the defendant's trade.

Judge Kohlsaas: "I think if they are sending out any circular based on that order entered here they had better stop."

1

Attorney Rector's Argument.

Mr. Rector then argued as follows:

"The patent sued on is a re-issue of a re-issue. The original patent on which the first re-issue was granted relating to these photographic films, was held invalid by the Court of Appeals for the Second Circuit. When the first re-issue was obtained suit was brought upon that re-issue and was discontinued four years ago. Then this second re-issue was obtained, and a suit was brought in New York in November, 1904, on this same patent, against identically the same sort of films complained of here. In these suits the defendant's proofs, as the petitioner shows, were closed in February, 1906, more than two years ago, and the defendant has continued from that day to this to manufacture and sell the identical films complained of, and the complainant here, the owner of this patent, has made no move whatsoever to bring that cause to a hearing, although it has been in its power for two years past to bring that suit to a hearing, and have an adjudication upon its patent."

2

3

"Now, instead of bringing that case to trial and securing an adjudication, it comes out here on March 6 and brings suit against the Kleine Optical company and George Kleine personally; on March 16 it files three suits against customers of the defendant; on March 17 three more; on March 23 another; on March 24 another; on March 30 another; on March 31 another; on April 11 two such suits are filed at Milwaukee against customers; April 20 we have three more at Cleveland."

4

Discusses Advertising Literature.

"On the day after your Honor granted the order in this case it filed eight more in this court, after the service of this petition, and in St. Louis it files two more. In all its advertising literature set forth in this petition it is threatening to sue all of the customers of this defendant, and it has its bills of complaint in printed form so it can write in the name of the defendant and send them out broadcast, and it

1 is preparing and going along to sue the customers of this defendant broadcast all over the country, and advertising these suits in the trade press and public press for the purpose of intimidating and terrifying the trade of the defendant, so it can ruin its business before there can be any hearing on the merits of the case, notwithstanding they have made no effort to bring it to trial, and with the presumption of invalidity against its patent, based upon the decision of the Court of Appeals of the Second Circuit, to which I have referred.

2 "There is no charge against Mr. Dyer, excepting as counsel. He has given out interviews, expressing his determination, and the complainant's determination, to sue everybody whom they claim may be infringing this patent, including all of these users of these films sold by this defendant, and any one else, wherever situated.

No Bad Faith Charged.

3 "There is no charge of moral turpitude or bad faith or anything else against Mr. Dyer, and the references in the petition are almost entirely quotations of formal statements given out by Mr. Dyer, who poses as the advertising counsel as well as the court counsel for the complainant, respecting the intention of the complainant to bring the suits, stating that suits have been brought against the Kleine Optical company, and more are to follow against its customers, and against anybody using any films excepting those supplied by the complainant.

4 "I insist that this is a matter of gravest emergency. Their advertisements are going out all the time. This new circular that has just been printed, dated the day this order was made, sets forth a consent decree, not referring to the fact that it was a consent decree, against one of these defendants, entered by your Honor some weeks ago, as an adjudication upon the merits of the suit and the merits of this patent."

Mr. Offield: "Do you mean to say that the defendant sent this circular out?"

Mr. Rector: "I do, sir."

Court Reads Bulletin No. 15.

Judge Kohlsaaf was here handed Bulletin No. 15, issued

by the Film Service Association, which was printed in full in a recent issue of THE SHOW WORLD. While the Court was reading same Mr. Offield said:

"It does not profess on its face to be sent out by the complainant. They are the licensees of the Edison Manufacturing company, who have great faith in this patent, and I think they have a right to be protected under it. Your Honor will see that it states the following statement has been received at the office of the Association of the licensees of this company, and they sent this out. We knew nothing about it. They believe they had a right to send it out.

"Every one of these parties against whom suits have been brought, while they say now that they are customers of this defendant here, they admit that these films can be bought in the open market in Europe or in this country, and such an order would practically be an injunction against those parties from buying films from anybody else except the defendant in this case.

"The defendant is not a manufacturer, never manufactured a film and never will. The circumstances are peculiar here. We have the patent, and we believe that the re-issue has been granted by the patent office and founded upon the decision of the courts which made the re-issue necessary.

Attacks Shiftless Individuals.

"These parties that we are suing here—that these men call their customers—are the electric theaters all over the country. They are naturally shiftless individuals, who rent a store for a week or a month, or a few months, and all their apparatus, or property, which they have got is that represented by those moving pictures; and these gentlemen here breed this intimidation by going around to these men who have been using our films and soliciting their business, instead of buying those of the complainant, and from the other manufacturers in Europe and in this country."

Mr. Rector: "I think when there are thirty or forty suits commenced there should be a stop to it until there is some evidence that these parties are infringers."

Judge Kohlsaot: "In view of this circular I shall restrain them from commencing any more suits until such time as the court shall have passed upon the merits."

Mr. Offield: "Is your Honor going to hold us responsible for the licensees?"

1

Holds Licensees Responsible.

Judge Kohlsaas: "Yes. When they combine that way it is very easy for the attorney to get somebody else to do it, and the only way the court can reach these matters and do justice is to hold them for it.

"If you stipulate that there shall be no other suit begun until application for the preliminary injunction is heard in this case, probably there is no need of entering the order. I don't want that to be advertised, either."

2

Mr. Offield: "They will shout this all over the country, that we have been enjoined, and they are perfectly bomb proof, and that is what they want here. I want Mr. Dyer to come out here and argue his own case on this proposition."

Judge Kohlsaas: "Have you got any case pending here that you can bring to an issue on preliminary application? You are rather accused of commencing suits and letting them hang up."

3

Mr. Rector: "There has been a suit pending on this patent for practically four years past, in which the defendant's proofs were closed more than two years ago. In this case here against the Kleine Optical company the defendant entered its appearance the day after the bill was filed, and filed its answer on the following rule day, and the complainant could have had that case at issue nearly a month ago, if it was desirous of expediting the cause. We are quite willing that your Honor shall make any order expediting this cause to a hearing.

Offield Knows No Reason.

4

Mr. Offield: "So am I. I don't know anything about it. I don't know any reason about that suit down there. There may be good reasons, just the same as for the circular. These parties, that they profess to represent, for whom they ask your Honor to issue an injunction against suit, have taken advice upon that matter and believe that patent is valid, and have made settlement."

Judge Kohlsaas: "If the ad. said that it was by agreement it would be different. The order will be entered as follows: Motion for restraining order continued until such time as motion for preliminary injunction is heard. Counsel for complainant stipulates that no new suits shall be brought against customers of the defendant petitioner until the hear-

ing of motion for preliminary injunction. Cause taken under advisement." 1

By agreement of the parties the cause was set for Monday, May 11. Judge Kohlsaas explained that he expected the order carried out, and for that reason had inserted in the order "Cause taken under advisement," so that action might be taken if Mr. Offield feared that his clients might get away from him, and stating further, "of course, on the hearing the Court will not be disposed to take any undue advantage."

Regarding enjoining the use of the circular sent out, Bulletin No. 15, of the Film Service Association, Judge Kohlsaas said: "If you repeat to Mr. Dyer the view the court takes of that it will be the same thing." 2

Proceedings on May 11.

On Monday, May 11, the parties again met before Judge Kohlsaas, the Edison Manufacturing company being represented by its general counsel, Frank L. Dyer, and Mr. Linthicum, of Offield, Towle & Linthicum. Edward Rector, of Rector, Hibben & Davis, and D. W. Cooper, of Kerr, Page & Cooper, argued for the Kleine Optical company.

In the court room were present F. C. Aiken, president of the Amusement Supply company, vice-president of the Theatre Film Service Association, and vice-president of the Film Service Association; W. N. Selig, president of the Selig Polyscope company; Dwight Macdonald, secretary of the Film Service Association, New York; A. D. Flintom, of the Yale Amusement company, Kansas City; John Hardin, Chicago manager of the Edison Manufacturing company, and Warren A. Patrick, general director of THE SHOW WORLD. 3

Mr. Rector again read the petition of the Kleine Optical company, and made the opening argument, reading at length from various decisions. In referring to the published statements of the Edison Manufacturing company to bring suits against all infringers wherever found, and push cases to a speedy hearing, Mr. Rector said: 4

Mr. Rector Addresses Court.

"The principal effort to bring any case to a speedy hearing seems to have been to secure a consent decree or two against individual defendants, who were induced to consent

1 to such a decree, and then to advertise those consent decrees throughout these same trade papers as *bona fide* adjudications of the validity of this patent, and of its infringement by the films sold by the Kleine Optical company."

The matter of Bulletin No. 15 was again gone into at length, counsel stating:

"That bulletin has not only been circulated in great quantities, but has been published in the trade papers, after our last meeting here," exhibiting to the judge THE SHOW WORLD and other papers. Continuing, he said:

2 *Bulletin Signed by Complainant.*

"At the former preliminary hearing before your Honor the complainant's counsel sought to disclaim responsibility for that bulletin, which was brought to your Honor's attention at that time; but I call your attention now to the fact that the bulletin is signed by the complainant company. How the complainant can seek to disclaim responsibility for the publication of a bulletin signed by itself I do not know."

3 After referring to the various advertisements which have appeared, including that of Pathe Freres, mentioned above, Mr. Rector said:

"There has been a systematic campaign of intimidation carried on by this complainant, seeking to terrify the customers of this defendant and users of these films, and so frighten them that they would discontinue purchasing films from the defendant."

4 Mr. Rector again called attention to the fact that in the Schneider suit, which had not been brought to final hearing although the proofs of the defendant were closed two years ago, and to the case at bar, contending that if the complainant was desirous of a speedy hearing it could have had it.

Dyer Argues for Edison.

The answer of the Edison Manufacturing company to the rule to show cause why an injunction should not be granted was read by Mr. Dyer, in substance as follows:

The re-issue of the letters patent in two parts is set forth, and the suits against the Biograph company thereunder, alleging that the same have been pressed as vigorously as possible

It admits that the proofs in the Eberhard Schneider case were closed on Feb. 5, 1906, but alleges that even before the closing of his proofs said Schneider had ceased infringing operations, or at least to a material extent, and that said Schneider has not since resumed same. That the Kleine Optical company, or persons or corporations acting in concert with it, have recently concluded an arrangement under which efforts are to be made to force said Schneider suit to a final hearing; and complainant agrees to proceed with that suit, provided defendant will admit its privity therein and be bound by the results thereof. Complainant, however, wishes to avoid, if possible, the prosecution of a suit against an inactive defendant, unless the result, if favorable, can have some substantial effect.

That under the said camera patent suit was brought against the Selig Polyscope company, which was not pressed until after the decision in the Biograph case, and on May 7, 1907, after argument, Judge Kohlsaatt entered an injunction restraining Selig.

Discusses Claims of Complainant.

Complainant claims that it is impossible to make motion picture films without violating the Edison patent, and after the decision upholding the Edison patent all manufacturers in this country, with one exception, sought licenses from the Edison Manufacturing company, and were granted same. Between October, 1907, the date of the second decision sustaining the validity of re-issue letters patent in the camera, and March 1, 1908, when the said licenses became effective, complainant was endeavoring to bring about an amicable arrangement with such other manufacturers, under which they might be licensed, and for this reason refrained until on or about March 1, 1908, from bringing new suits under said re-issue letters patent on the film.

Complainant further says that it has no knowledge that the parties mentioned in said petition of defendant against whom suits have been instituted by complainant are customers of the Kleine Optical company, and that moving picture films embodying the Edison patent are imported into this country in large numbers by, and may be obtained from, many other parties than said Kleine Optical company; that the Kleine Optical company is not a manufacturer of mov-

- 1 ing picture films, but merely an importer thereof and dealer therein, and that it obtains no other profits than those derived from the sale or lease of the said films.

That the persons sued by the Edison Manufacturing company for exhibiting or using moving picture films and who are alleged to be customers of the Kleine Optical company are for the most part without capital, and that unless suits are instituted against such persons and prosecuted actively the possibility of recovery against them will be very remote.

- 2 Complainants admit that it has issued warning notices and letters to users of infringing moving picture films, indicating its intention to assert its rights under said letters patent, but complainant denies that it has threatened to bring suit against all persons dealing in or using photographic films supplied by the Kleine Optical company, and denies that it has selected the Kleine Optical company as an object of attack, as asserted in said petition.

- 3 Complainant further says that the Kleine Optical company has issued from time to time threats and warnings of its intention to sue the users of motion picture films made by the Edison Manufacturing company, and has introduced in various trade papers false and misleading advertisements, all designed to annoy and harass complainant, and to deceive complainant's customers and those of its licensees, and to create the false and misleading impression that defendant owns or controls patents which are infringed by the sale or use of complainant's licensed motion pictures, and has falsely and unfairly and maliciously represented to the public the effect of the favorable decision on said patent.

Dyer Affidavit Read.

- 4 The affidavit of Mr. Dyer was then read, in substance corroborating the statements in the foregoing answer, and stating:

"It is true that the court found that the so-called 'Biograph' camera, originally used by the American Mutoscope & Biograph company, was not an infringement," but alleging that same is impractical and that the Edison camera is essentially the perfect apparatus for the purpose, and this fact was recognized by all the American manufacturers immediately after the favorable decision of the Circuit Court of

Appeals. That the Biograph company was given an opportunity of taking a similar license, which they refused to do unless placed on a more favorable basis than any other licensees. 1

The affidavit denies the validity of the Latham patent.

The affidavit of George F. Seull, employed in the legal department of the Edison Manufacturing company, was read, regarding the publication of various statements, and stating that he prepared Bulletin No. 15, but denies that it was meant to mislead.

John Hardin, Chicago manager of the Edison Manufacturing company, made affidavit to the effect that films complained of can be secured from other parties than the Kleine Optical company, and a similar affidavit was made by Dwight Macdonald, secretary of the Film Service Association, admitting that he sent out Bulletin No. 15 to the members of the Association and a few of the trade papers. 2

Two Questions Involved.

During the course of his argument, Mr. Dyer said: "In the present case it seems to me that there are two questions involved, one commercial and the other legal. The commercial question is the question of the advertisements, the statements which are circulated. In every patent suit where a patentee is seeking to secure his rights there is bound to be more or less misrepresentation and exaggeration. That must be freely admitted. The American advertising man finds it very hard to be conservative. Those statements, however, are very conservative. They are statements that any patentee might make, who believes that he has a valid patent, particularly a patentee who had not been able to have his patent sustained until eleven years after it was granted, and especially a patent with the moral support of every American manufacturer behind it, recognizing it." 3 4

Disapproves of Bulletin No. 15.

In regard to Bulletin No. 15, Mr. Dyer said:

"I absolutely disapprove of that, your Honor, and when the matter was called to my attention I was horrified to think that a statement of that kind should have been sent out; and although that particular bulletin is no longer circulated I presume the effect has been done. But we are par-

1 ticularly willing to consent to an injunction from taking advantage of that fact, which of course we will not do." In the memorandum of authorities, however, Mr. Dyer stated that while the courts look upon such action as reprehensible, it is more or less irrelevant. Continuing, he said:

2 "I think with the exception of this particular bulletin, which we absolutely disapprove of, your Honor will find that the merits are decidedly with us. The statements are conservative and fair. On the other hand, the defendant has issued false and misleading statements, which are calculated to injure the complainant."

Attorney Discusses Profits.

Mr. Dyer then argued that the Kleine Optical company made only small profits, and that the exhibitors were the ones who made large profits, some of them paying \$25,000 to \$30,000 rent, and they were the people naturally selected to recover substantial damages; that the Edison Manufacturing company was willing to push its suits to a speedy hearing, and would do so; that if the court was to grant an injunction the Kleine Optical company should be compelled to
3 give a large bond, and that it should give to the Edison Manufacturing company a list of its customers, with additions from week to week, so that the Edison Manufacturing company could refrain from suing the Kleine Optical company customers, and stating further:

"We believe that in any event the Edison Manufacturing company should not be enjoined from bringing suits against such of its licensees who have signed license contracts, admitting the validity of the patent, but who have broken those contracts, and are now obtaining films from the Kleine Optical company. As to those people we have an independent right of action, and against those particular defendants we believe we have a right to prosecute our suits."
4

Linthicum Discusses Exhibitors.

Mr. Linthicum followed Mr. Dyer for the Edison Manufacturing company, and in reference to the exhibitors said:

"These various fly-by-night concerns are exhibiting these films, and making large amounts of money, and are at present customers of the Kleine Optical company. Now, how can Mr. Kleine make himself responsible, if he would be re-

sponsible, for the damages that would accrue to this patentee, if the court were ultimately to sustain this patent, and to award a decree against these particular defendants, and the Kleine Optical company should make the patentee whole for the damages sustained and profits lost by the infringing use of these films? 1

"This manufacturer sells these films, making a small profit on each transaction, and the user makes a large profit. It seems to me that this patentee should have the right to institute these suits for the purpose of preventing the running of the statute of limitations, for every day that goes by we lose the right to go back for damages. I am utterly unable to see of any practical manner in which this court can make this complainant whole as against these irresponsible and fugitive people who are making these enormous profits through the use of these infringing films." 2

Says Complainant is Responsible.

Mr. Cooper contended that the complainant itself was responsible for this condition of widespread use, and for the running of the statute of limitations for four years for the reason that if it had pushed its suit against Schneider it could have had an adjudication at least two years ago, and that there was no adequate explanation for this great rush of suits at the present time; and further, that the present suit had been filed for two months, and the hearing thereof not been expedited as rapidly as circumstances permitted. 3

Mr. Dyer then repeated his offer to finish up the Schneider case, if Mr. Kleine would accept that as an adjudication, and would abide by that decision, and not take advantage of the fact that the patent has not been adjudicated. 4

Mr. Cooper said this was absurd, that he would waive no rights of his client, and insisted that he was entitled to interpose all defenses possible.

Court Favors Injunction.

The Court then said:

"I don't believe the complainant has the right to come in without an adjudication, and keep things in that condition. I don't believe that is fair, and don't believe any court should

- 1 countenance it. I think I had better restrain you from bringing any more suits until such time as you have an adjudication."

Mr. Dyer: "Any users?"

The Court: "Against Kleine's customers."

Mr. Dyer: "Will not the court protect us in any way—"

The Court: "You have not protected yourselves."

- 2 Mr. Linthicum next argued that such an order would be unjust, that these exhibitors, of whom there are probably 400 in Chicago alone, were moving around, changing about, and going out of business, and if the suit were decided in
3 favor of the Edison Manufacturing Company it would be impossible to recover damages for them.

Court Advocates Agreement.

This elicited from the court the following statement:

"How is it they are making so much money, then? I don't think I would carry on forty suits with no adjudication on the patent. I think I will let the injunction hold here, with a bond of \$20,000. It is a bad situation, which has never before presented itself to me."

- 3 After considerable argument on both sides it was agreed between the parties that no formal order would be entered to this effect, and that the suit against the Kleine Optical company should be brought to a speedy hearing, forty-five days being allowed to the complainants to take its proofs and an additional forty-five days for the defendant, and that the case should be brought to trial within ninety days; that in the meantime no suits were to be brought against the customers of the Kleine Optical company, but that the Edison Manufacturing company could institute suits
4 against such of its licensees as had broken their contracts.

Court Requests Reticence.

The Court declared that he did not wish the proceedings to be used for advertising purposes.

Upon the hearing on April 28 a similar remark was made by the court, and in deference to same THE SHOW WORLD refrained from publishing a report of that trial, although its representative was present. After the hearing on May 11, THE SHOW WORLD reporter stated these facts to Judge Kohlsaas, and further that if the Court was

of the opinion that the publication of the proceedings would be detrimental to the administration of justice in this case we would refrain from presenting same, notwithstanding the fact that THE SHOW WORLD is first on the news stands, and this matter was a clear "scoop," of such interest to the moving picture industry, amongst whom our circulation was large.

1

By Mr. GROSVENOR:

Q. Mr. Aiken, you sold out to the General Film Company in June, 1910? A. Yes, sir.

2

Q. I read to you certain questions and answers from the record in the case of the Greater New York Film Rental Company against the Biograph Company and General Film Company, purporting to be questions and answers given by you on examination in that case, page 3417:

"Q. At the time this offer was made to you by Mr. Kleine, your exchange was doing quite a good business, wasn't it? A. It was doing fairly well.

"Q. It was a paying business? A. Yes, sir.

"Q. You were making a nice income out of it? A. Yes, sir.

3

"Q. And making a comfortable living out of it? A. Yes, sir.

"Q. And you had been ever since you were in the film rental business, hadn't you? A. Yes, sir."

Did you so testify in that suit? A. I did.

Q. Before you sold out to the General Film Company, that company had acquired a number of rental exchanges in the United States? A. I think they had acquired the Kleine Optical Company's exchanges.

Q. And the Kleine Optical Company had an exchange in Chicago? A. Yes, sir.

4

Q. You knew, then, that the General Film Company had already entered upon the business in competition with your company at the time you sold out? A. I thought so from what I had read.

Q. Well, you knew, then, if they had not already entered, they were going to enter into the field in the near future? A. That is what I understand, yes.

Q. And you knew that the various licensed manufac-

- 1 turers were all interested in the General Film Company?
A. Yes, sir.

Q. I read you further questions and answers from the record in the case of the Greater New York Film Rental Company against the Biograph Company and others, at page 3441, as follows:

- 2 “Q. Didn't you feel at that time that with the manufacturers interested in this General Film Company, and feeling from your own deductions, as you stated, that you were reasonably certain that the manufacturers were interested in the General Film Company, and feeling that the General Film Company was coming to Chicago, didn't you then feel that with the resources of the General Film Company, controlled as it was by the manufacturers, that if it came into your market as one of your open competitors, it would be able to offer better inducements to the exhibitor than you could offer? A. I fully realized there would be severe competition.

“Q. And you fully realized that in conduct of that kind, the advantage would be entirely with the General Film Company, did you not? A. I did.

- 3 “Q. And wasn't that one of the causes that induced you to sell your exchange? A. It had entered into it, as I stated before.

“Q. And didn't you feel at that time, taking that into consideration, that with the keen competition that would then result, the value of your exchange would be greatly reduced, and that you might be threatened with extinction as a film rental agency? A. I realized that the value of the exchange would be reduced with that competition.

- 4 “Q. And didn't you feel that the competition would be so keen that it might threaten the very existence of your exchange? A. Yes, sir.

“Q. And wasn't that one of the reasons why you felt you had better take your price and sell out? A. As I have stated before, that is one of the reasons that entered into it.”

Did you so testify in that suit? A. I did.

Q. Mr. Aiken, you have testified somewhat on direct examination regarding the competition between the various manufacturers who were Edison licensees in the year 1908. Is it not a fact that those Edison licensee manu-

facturers all sold their film to the rental exchanges at the same price? A. Yes, sir. 1

Q. Is it not also true of conditions since the Motion Picture Patents Company was formed, that the licensed manufacturers and the Patents Company have all leased or distributed their product at uniform prices? A. Yes, sir.

Q. The prices being determined by so much per foot? A. Yes, sir.

Q. And in the same way, the General Film Company, from the time you have been connected with it, has sub-leased or sub-rented the films of the different manufacturers according to the age of the film, and not according to the name of the maker or the character of the film? A. What do you mean with reference to various prices? 2

Q. That is to say, if the General Film Company has had ten films made by ten different licensed manufacturers, all of the same age, it has sub-leased those ten films at the same price to the different exhibitors? A. Yes, sir.

Q. On page 2341, Vol. IV, you gave certain testimony as to percentages of business done by the General Film Company. Have you prepared any memorandum or any figures or tables which serve as the basis for the testimony you gave? A. No, sir; only memorandums that I made at the office in determining that. 3

Q. Have you prepared any memorandum at your office showing the number of theatres? A. No, sir, I have not any memorandum that was retained on that.

Q. You have not preserved any memorandum? A. No, sir.

Q. Do you know of any such memorandum in the offices of the General Film Company? A. No, sir; I do not.

Q. Then these figures that you gave are merely your own estimate? A. Not entirely my own estimate. It was my conclusion based on the estimates of the branch managers. 4

Q. Have you preserved any figures of any kind relating to any part of this territory, on this subject? A. No, sir.

Q. You have not any figures, as to the relative or comparative number of the theatres in any section of this territory, over which you have supervision? A. No, sir; I have not.

Q. Either as to the amount of business done by the dif-

1 ferent companies, or as to the number of theatres? A. No, sir; I have not.

Q. You have not any documents or memoranda, of any sort, which you could submit in support of that testimony?

A. No, sir; I have not.

Mr. CALDWELL: The witness has not testified, on direct examination, to figures as to numbers of theatres, and so forth.

By Mr. GROSVENOR:

2 Q. Have you any memorandum, or statistics, or documents, in support of the figures which you gave on direct examination, relative to the amount of business done by these several companies? A. No, sir; I have not. Those figures were given to me, as I stated, by the branch managers—I presume, taken from their records.

Q. Did you ever see their records? A. Why, I have seen them occasionally.

3 Q. How were these figures given to you? Orally or otherwise? A. No, sir; they were given to me, and I put them down on a piece of paper.

Q. And have you preserved the paper? A. No, sir, I have not, because I can remember the figures. I knew approximately the amount of business we were doing.

Q. Did you ever make any reports to your superior, the President and general manager of the company? A. No, sir, I did not, because, ordinarily, the branches make the reports direct.

4 Q. You said on direct examination, page 2341, Vol. IV, questioned by Mr. Caldwell: "Are there many towns in that territory where motion picture theatres are found, where the General Film Company has no customers? A. Yes, sir, there are." Now, can you name some large towns in that territory, where that condition is true?

Mr. CALDWELL: I object to that, on the ground that the question read the witness did not use the words "large towns." It was "many towns."

Mr. GROSVENOR: I did not say that the question said he used the words "large towns."

Mr. CALDWELL: I object to the form of the question.

Mr. GROSVENOR: I am making my question very easy for him, because I am asking him for "large towns," which naturally first occur to the memory.

1

By Mr. GROSVENOR:

Q. Can you name any large towns in that territory, where there are motion picture theatres and the General Film Company does not have a theatre? A. I don't recall just at this moment, no, sir.

Q. Can you name any small towns where there are motion picture theatres, but in which the General Film Company has no customer? A. I do not recall any definite places, no, sir.

2

Q. Did you ever prepare any list or memorandum showing such information? A. No, sir, I never did.

Q. Have you any documentary evidence of any kind, which could support that statement you gave on direct examination? A. No, sir.

Q. Do you have any interest in any theatres to-day? A. No, sir.

Q. Either through stock ownership or otherwise? A. None whatever.

3

Q. When you sold out to the General Film Company, how many customers did you have? A. I don't know exactly. I think we had a hundred and fifty or a hundred and sixty.

Q. All those customers were using and displaying the pictures of the ten licensed manufacturers? A. Yes, sir.

Q. If you had decided, at that time, to re-engage in the film business, could you have retained the patronage of those 150 customers by offering them independent films, or such films as you could have acquired from outside the licensed manufacturers? A. I don't expect that we could have retained all of them.

4

Q. How many do you think you could have retained?

Mr. CALDWELL: Objected to as purely speculative.

By Mr. GROSVENOR:

Q. How many of the 150 customers you had at that time could you have retained, if you should have re-engaged in the film business and been able to supply them only the

- 1 pictures of the unlicensed manufacturers and importers?
A. I would be unable definitely to state as to that.

Q. Well, it would practically have meant the end of your old list of customers and required you to start with a new list, wouldn't it? A. I would not consider it in that way at all, on account of one or two other exchanges around there whose licenses were cancelled, or they withdrew, and they continued in business, and they did not lose all their customers.

- 2 Q. When you were doing business in 1908 and 1907 as a rental exchange, the films were always sent to you in the manner the business is done to-day, that is, shipped to the exchanges from the factories of the different manufacturers? A. Yes, sir.

Q. What per cent. of the gross receipts of your rental exchange, in the year 1908, consisted of the rentals for the use of the films? A. I would consider about 95 per cent.

- Q. In the rental exchange business, it has always been true, has it not, that the rental of the films has constituted practically all the business of the exchange? A. The greater
3 percentage of it.

Redirect examination by Mr. CALDWELL:

Q. Mr. Aiken, at the time you sold your exchange to the General Film Company, did you regard the exchange business as a stable one? A. No, sir, I did not.

Q. Did the fact that you might have or would have competition with the General Film Company in Chicago, constitute the sole reason that induced you to sell? A. No, sir, it was one of the reasons.

- Q. Was that the principal reason, if there was any reason, that operated on your mind more than another? A.
4 Yes, sir, there were two particular reasons. One was the price that was offered to me, and the other was, that I was really getting tired of the business, in the condition that it was in at that time. We were making less money every year that we were in business. That is, after 1908. We made most of our money in 1908, and the conditions were such that I was very glad to sell out at the price that was offered.

Q. It was a theatrical business? A. Yes, sir.

Q. And you knew at the time, did you not, or did you

know, that any form of the theatrical business is more or less speculative and hazardous? A. Yes, sir.

1

Recross examination by Mr. GROSVENOR:

Q. In what sense is it a theatrical business? A. Any business that is a form of amusement.

Q. You think it is theatrical? A. Yes, sir. That is what I would term as theatrical.

Redirect examination by Mr. KINGSLEY:

Q. Is the price of the motion pictures to the exhibitor governed by the age? A. Yes, sir.

2

Q. When you say that the price of the motion pictures to the exhibitor is governed by the age, do you mean the physical age of the motion picture, or the time that it has been released? A. I mean the time.

Q. That it has been released? A. That it has been released, yes, sir.

Q. When you sell a motion picture service to an exhibitor, do you quote him a sum for a whole program? A. We usually quote him a price for the program, to be changed once a week, or twice, or seven times.

3

Q. And what does the ordinary program consist of? A. Usually three subjects.

Q. Three subjects a day? A. Yes, sir.

Q. Changed how many times? A. Changed daily.

Q. And in furnishing such a program, do you endeavor to give him a balanced program? A. We do.

Q. What do you mean by a balanced program? A. We give him a program of one subject of drama, one subject a comedy, or topical, or educational, and one subject of western, or pictures of that character; in other words, we endeavor to give him a program of variety.

4

Q. Would it be feasible, in making up this program, to distinguish between the different pictures as to merit and desirability, and then fix different values upon each picture, and carry out the resulting bookkeeping problem? A. I would not think that it would, no, sir.

Q. Do you find it more feasible to furnish a program in the way that you are now furnishing it? A. Yes, we find it more feasible. There never have been any objections.

1 Q. Do you find that exhibitors prefer the pictures of one producer over the pictures of another producer, even when they are of the same age? A. Yes, sir.

Q. Do they frequently express such preferences to you? A. They do.

Q. And do you endeavor to gratify their preferences? A. We do.

Q. Do exhibitors ever object to a certain picture so positively that they prefer a picture in its place from another maker, even though it be an older release? A. Yes, sir.

2 Q. When you refer to the age of a motion picture, what do you mean? A. I mean the number of days since it has been released.

Q. By that you mean the number of days that it has been on actual exhibition before various audiences? A. Yes, sir.

Q. And in referring to the age of a motion picture, do you refer to the copy, the particular copy, or to the subject which has been on exhibition? A. The subject.

8 Q. If a reel has not been in service at all, though the subject has been released, does its value diminish as the release age increases? A. Yes, sir.

Q. When an exhibitor selects a motion picture at your exchange, or one of the exchanges under your supervision, does he pay any attention to the physical aspect and condition of the reel? A. They do not, as a rule, see the reel at all.

4 Q. When an exhibitor selects a motion picture at your exchange, or at one of the exchanges under your supervision, does he select the motion pictures he wants by physical examination and inspection of the reels, or by stating the kind of plays he desires, the sort of entertainment he wishes to give, and the type of audiences he must amuse and entertain? A. They usually send in a request list. Or indicate by the number of the film.

Q. How long have you been in the motion picture business? A. Since 1903.

Q. What was the rule regarding the prices of motion pictures at the time you went into the business? A. Well, at the time I went into the business, there were not any theatres.

Q. What was the rule in 1906? A. Practically the same as it is today. 1

Q. That is to say, the price of the motion pictures was determined by the age of the release? A. Well, in 1906 there were a great many films that had been made that had really never been released.

Q. I am not speaking of the pictures that are in actual service. Is the price determined by the date of the release and was the price determined in 1908 by the date of the release? A. Yes, sir.

Q. Has any other rule for fixing the value of motion picture service been in effect, of which you are aware? A. No, sir. 2

Q. Do you know the rule which prevails in unlicensed exchanges with respect to the price of motion pictures? A. We understand it is the same.

Q. They base their prices upon the age of the release? A. Yes, sir.

Q. When numerous copies of a motion picture are in use in a given neighborhood, does it lose value more rapidly on that account? A. Yes, sir.

Q. What is the reason of that? A. The reason is because more people would see that subject in the same length of time if there were six copies than they would if there were only one. 3

Q. Would you say that if five copies were out, that the feasibility of exhibiting the subject would decrease more rapidly than if one copy was out? A. Yes, sir.

Q. Would you say that as the number of people who have seen a motion picture in a given territory increases, the value diminishes? A. That is very true, and that is what determines the price.

Q. Have you ever had any experience of replacing a worn copy of motion picture by a copy which has never been in actual physical use? A. Yes, sir. 4

Q. Is the price of the copy which has never been in actual physical use determined by the release date? A. Yes, sir.

Q. Was it your experience during the period of the Edison license agreement and subsequently, during the Patents Company license, that the productions of the different manufacturers, while sold or leased at uniform prices, were actually of different values? A. Yes, sir.

1 Q. Is it not true that this variation in quality or value influenced you in your selection of motion pictures as much or more than you would have been influenced by a difference in price? A. Yes, sir.

Q. In your business of purchasing motion pictures for renting purposes, is price, or quality, or popularity, more important? A. Popularity is more important.

Q. Does the variation in quality of the motion pictures supplied at uniform prices insure competition between producers as effectively as would a variation in price? A. I think so, yes, sir.

2 Q. Has that been your experience? A. Yes, sir, it has been.

Q. And do you find that, from time to time, the popularity of a make increases or diminishes according as the merit of the production increases or diminishes? A. Yes, sir; that is true.

Q. Have you had experience in purchasing projecting machines? A. Yes, sir.

3 Q. Do you buy projecting machines because they were cheap, or because they were efficient and satisfactory? A. Well, we bought them first to sell.

Q. You are referring now as a dealer? A. Yes, sir.

Q. My question referred to whether or not you had purchased them at any time as an exhibitor? A. No, sir.

Q. You never were an exhibitor, as I understand? A. No, sir.

Q. During your experience as a dealer in projecting machines, did you find that exhibitors, when purchasing of you, bought because they were cheap, or because they were efficient and satisfactory? A. We have had sales both ways.

4 Q. What was your experience with respect to exhibitors purchasing projecting machines? Did the majority of them want the latest type? A. Yes, sir.

Recross examination by Mr. GROSVENOR:

Q. Were you selling projecting machines in 1906, 1907 and 1908? A. Yes. Since 1903.

Q. Please name the manufacturers from whom you bought projecting machines from 1903 down to December, 1908. A. Well, in 1903 we were handling the Edison machine and the Optigraph. The Optigraph was made by the

Enterprise Optical Company. A little later on, we handled the Powers Cameragraph. 1

Q. And you continued to handle the Edison at the same time? A. Yes, sir.

Q. Then did you sell the Edison from that period down to 1908? A. Yes, sir.

Q. Had you sold those Edison machines outright, without any conditions or restrictions attached to the sale? A. We had.

Q. Had you sold any machines made by any other manufacturers during those years besides those you have named, that you now recall? A. I think we had sold the Selig Polyscope occasionally, and Lubin's machine. 2

Q. The bulk of your sales was of the Edison machines? A. The bulk of our sales from 1903 to 1906 was the Optigraph.

Q. And then from 1906 or '07 down to the end of 1908, what were they? A. Well, it was Edison and Powers, mainly.

Thereupon WILLIAM C. BRANDON resumed the stand. 3

Cross examination by Mr. GROSVENOR:

Q. You have a large territory under you as branch manager at Atlanta, Georgia, of the General Film Company, Mr. Brandon? A. Yes, sir.

Q. Are there any sharp lines of division separating your territory from that of the Washington branch? A. Why, yes, sir. The State of North Carolina line is supposed to be the boundary of the end of other territory, and the beginning of ours, the northern boundary line of the State of North Carolina. 4

Q. Do you do business north of that line? A. No, sir, although they have one or two houses south of that line.

Q. How far west do you go? A. The Memphis territory goes into the entire State of Arkansas.

Q. Memphis is one of your sub-branches? A. Yes, sir.

Q. You say that branch covers the entire State of Arkansas? A. Yes, sir.

Q. Then it comes in conflict with or overlaps another

1 branch of the General Film Company, does it not? A. I really do not know, Mr. Grosvenor. The Cincinnati branch probably comes down to there, and the Pittsburgh branch may go down in there. I don't know what their territory is.

Q. And some of this territory you cover may also be reached from other branches of the General Film Company, particularly in the West? A. In the West, yes, sir.

Q. In testifying on direct examination, you referred to a memorandum, on page 2386, Vol. IV. Have you that memorandum here? A. No, sir.

2 Q. Well, you had it on direct examination, did you not? A. Yes, sir. That was merely a list of the theatres in my territory.

Q. Are those papers which you are handing to your counsel, the memorandum which you used on your direct examination? A. They are.

3 Mr. CALDWELL: I notice that there are two papers here giving the theatres in different places, and one of these gives the names of the theatres, and by whom served, and the other appears to give the names of the theatres, also followed by a name. There is a third paper here giving the prices which you charge your customers.

The Witness: Those are only approximate prices. You will notice the prices are there for both the independent and the licensed theatres. I do not know what the independents' prices are but simply guessed at them.

By Mr. CALDWELL:

4 Q. Well, did you use these three memorandums in giving your testimony on direct examination as to the number and location of these theatres? A. No, sir.

Q. Do you have any objection to the prices which you are charging your customers, and which are shown on there, being disclosed? A. No, sir.

Mr. GROSVENOR: These papers which you have produced are the following: First, a memorandum, beginning with the names of towns headed by "Atlanta, Georgia," with a note attached to it as follows: "In

making up this list we have endeavored to make same as accurate as possible. It includes all theatres using service from this branch, also theatres which our records show are using independent service. However, there are numerous towns in Georgia, Alabama, Tennessee, North and South Carolina, that have theatres which we are unable to get complete record of. General Film Company, Atlanta, Ga. Branch."

1

The second memorandum is a paper on the letter-head of the General Film Company, giving the names of the Memphis customers.

2

The third memorandum is headed, "Jacksonville, Florida. December 4, 1913. List of Florida Motion Picture Theatres now Operating."

By Mr. GROSVENOR:

Q. Are these memorandums which you have produced the basis of your testimony, on direct examination, that there are six hundred and twenty theatres in your territory?

A. No, sir. In my testimony I stated that there were six hundred and twenty theatres. That was merely an approximate guess.

3

Q. How many did you add to the number that appears on these three papers, in order to arrive at the number, 620?

A. I added one hundred and seventy-five for the Mutual and one hundred and twenty-five for the Universal.

Q. The longer of these papers, beginning with the town "Atlanta, Georgia," states that it "includes all theatres using service from this branch, and also, theatres which our records show are using the independent service." Why did you add so many theatres for the Universal and the Mutual to the number that appear in these memoranda, when these memoranda already show that they do include all of the independent service? A. Because that does not include the exhibitors from the Memphis and Jacksonville branches. That is merely the Atlanta branch.

4

Q. Then, how many did you add for the Memphis branch? A. I simply guessed at one hundred and seventy-five for the Mutual and one hundred and twenty-five for the Universal. I have no knowledge of how many theatres they have, and have no way of finding that out.

Q. Have you ever counted them up? A. No, sir.

1 Q. You have not counted them up for either of these independent branches? A. No, sir.

Q. Or independent companies? A. No, sir.

Q. Then your estimate of six hundred and twenty theatres in your territory is merely a guess? A. Yes, sir.

Q. The statement that you have three hundred and twenty, that is, that the General Film Company has three hundred and twenty customers in that territory, is not a guess, but is based upon your record? A. That is correct.

2 Mr. GROSVENOR: I want to have these three memorandums marked as exhibits, and to put them in evidence.

The papers offered are received in evidence, and marked as follows: The paper entitled "In making up this list we have endeavored to make same as accurate as possible. It includes all theatres using service from this branch, also theatres which our records show are using independent service. However, there are numerous towns in Georgia, Alabama, Tennessee, North and South Carolina, that have theatres which we are unable to get complete record of," and comprising eight sheets, and a heading sheet, are marked "Petitioner's Exhibit No. 260, 8 sheets," each sheet being marked "Petitioner's Exhibit 257, 8 sheets," with an individual sub-number.

The paper entitled "Memphis Customers," being marked "Petitioner's Exhibit No. 261, 6 Sheets," containing list of "Memphis Customers," "List of Independent Customers in Arkansas," "List of Independent Customers in Tennessee," "List of Independent Customers in Kentucky," "List of Independent Customers in Mississippi," "List of Independent Customers in Missouri," each sheet being marked individually "Petitioner's Exhibit No. 261, 8 Sheets," with an individual number.

The paper entitled "List of Florida Motion Picture Theatres now Operating," is marked "Petitioner's Exhibit No. 262, 2 Sheets," sheets 1 and 2 respectively.

Said exhibits are not copied into the record, but have been furnished to Mr. Grosvenor for his examination.

The Examiner: The hearings are adjourned, by consent of counsel, until Tuesday, January 6, 1914, at 10:30 o'clock A. M., place of resumption to be determined in the meantime.

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Whereupon, at 1 o'clock P. M., on this Friday, December 12th, 1913, the hearings are adjourned, in accordance with the above.

IN THE

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DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA,	}	No. 889. Sept. Sess., 1912.
Petitioner,		
<i>v.</i>		

MOTION PICTURE PATENTS CO. and others,	}	3
Defendants.		

PITTSBURGH, PA., January 5, 1914.

The hearings were resumed pursuant to adjournment and by agreement of counsel at the Fort Pitt Hotel, Pittsburgh, Pennsylvania, at 10:30 o'clock A. M., January 5, 1914.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

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Present also, JOSEPH R. DARLING, Esq., Special Agent.

CHARLES F. KINGSLEY, Esq., appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

- 1 H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

Thereupon, JAMES B. CLARK, a witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed:

- 2 Direct examination by Mr. KINGSLEY:

Q. Where do you live Mr. Clark? A. Pittsburgh.

Q. How long have you lived in Pittsburgh? A. I have lived in Pittsburgh about twenty-five years.

Q. In what business are you now engaged? A. In the moving picture business, in moving picture theatres, and a stockholder, not active, in several film exchanges.

Q. How long have you been interested in the motion picture business? A. About eight or nine years.

Q. Where did you start in the motion picture business? A. In Pittsburgh.

- 3 Q. Were you in the film exchange business at that time? A. Yes, sir, I started in that.

Q. What was the name of the firm? A. Pittsburgh Calcium Light & Film Company.

Q. Were you associated with anyone else in the Pittsburgh Calcium Light & Film Company? A. Yes, sir, it was a corporation.

Q. Who was your associate? A. Mr. Richard A. Rowland.

Q. Did you open other branches later? A. Yes, sir.

- 4 Q. Where did you open branches? A. In Rochester, New York; Cincinnati, Ohio; Omaha, Nebraska; Des Moines, Iowa, and Wilkes-Barre, Pa.

Q. And what were the names of the other exchanges in the places you have named? A. Pittsburgh Calcium Light & Film Company, and we had an extra branch in Pittsburgh known as the Pennsylvania-Columbia Film Company.

Q. Were you a member of the Film Service Association which was formed sometime in 1908? A. Yes, sir.

Q. Were you ever an officer in that association? A. I was President of it.

Q. When were you President of the Film Service Association? A. The year of its existence. 1

Q. What was the date or year of its existence? A. I don't know the exact date, but I judge about 1908.

Q. In 1907 and 1908 did you have any knowledge regarding patent litigations between the Edison and the Biograph Companies? A. Only what I heard, from reports that there was such litigation.

Q. Were there reports in the trade that there was litigation between those companies? A. Yes, sir.

Q. On various patents? A. Yes, sir.

Q. Did you know the names of any of the patents which were in litigation, or which were rumored in the trade to be in litigation? A. Well, we knew them as the Edison patent, and the Biograph patent, and the Armat patent. 2

Q. And was there anything stated in the trade about the Latham Loop patent at that time? A. Yes, sir, I heard of it too.

Mr. GROSVENOR: What time was that, in 1908?

The Witness: Yes, sir. 3

By Mr. KINGSLEY:

Q. And in 1907? A. Yes, sir.

Q. Did you know anything more than what you had heard in a general way? A. No, sir.

Q. Respecting this patent litigation? A. No, sir.

Q. Did you read the trade papers during those years? A. Yes, sir.

Q. Did your exchange become one of the Edison licensees? A. Yes, sir. 4

Q. Did your exchange become a Patents Company licensee? A. Yes, sir.

Q. Did you object to taking out a Patents Company license at the time it was granted to the various exchanges? A. No, sir.

Q. At the time that your exchange took a license from the Motion Picture Patents Company was any assurance given you, or any representative of your exchange, that

1 the conditions of the Motion Picture Patents Company license agreement would not be enforced? A. No, sir.

Q. Were you given to understand that this license was merely a formality, and that if some violations of it should occur it would not be cancelled? A. No, sir.

Q. Do you recall whether or not in the license granted your exchange by the Motion Picture Patents Company there was a provision against subrenting by the exhibitor? A. Yes, sir.

Q. Were you in favor of that provision? A. Yes, sir.

2 Q. Let me ask you this: Were you the manager, the active manager of your exchange, prior to entering into the Edison license agreement, and the Motion Picture Patents Company license agreement? A. No. Mr. Rowland was really the manager. I looked after the financial end of it.

Q. Were you conversant with the details of the business? A. Yes, sir.

Q. Did you keep yourself thoroughly posted regarding its progress from day to day? A. Yes, sir.

3 Q. Did you know whether or not there had been any complaints in the trade respecting subrenting on the part of the exhibitors? A. Yes, sir, there were.

Q. Had your exchange had any experience in respect to subrenting on the part of exhibitors? A. Yes, sir, we had.

Q. What was your experience in that respect? A. Well, we had trouble with the exhibitors at long distance, where we had long shipments, who would subrent the films to half a dozen other exhibitors before shipping them back to us.

Q. Did that make any difference in your receipts and profits? A. Yes, sir, that was a loss to us.

4 Q. Did that make any difference with respect to the condition of the film when returned to your exchange? A. Yes, sir.

Q. What difference did it make in regard to that? A. The more it was used the worse its condition, and the older it got the lower the price would be for rental.

Q. Did you favor, or were you opposed to the provision in the Patents Company license abolishing the practice of subrenting? A. I was in favor of it.

Q. Do you recall when the practice for placing standing orders for film was adopted? A. I can't say that I know the exact time.

Q. Was it prior to the organization of the Patents Company? A. Yes, sir, I think it was. 1

Q. Is the standing order practice in vogue now among the independent manufacturers? A. Yes, sir.

Q. Or exchanges? A. Yes, sir.

Q. Do you know this of your own knowledge? A. Well, I don't place the orders, but I am conversant with the way the business is being run, and my understanding is that the standing orders are placed the same as we always did; in fact, I know that to be the case, although I do not place them.

Q. Mr. Clark, your firm sold its property to the General Film Company? A. Yes, sir. 2

Q. With whom did you conduct the negotiations for the sale of your property to the General Film Company? A. Mr. Kennedy.

Q. Mr. J. J. Kennedy? A. Yes, sir.

Q. Were you present when these negotiations were carried out? A. Yes, sir.

Q. Did you agree upon the price with him at your meeting? A. Yes, sir.

Q. Was this price satisfactory to you? A. It was. 3

Q. Did you have any prolonged negotiations over the price? A. Not over the price.

Q. Did you have any prolonged negotiations over any of the details of the arrangement that you made with the General Film Company through Mr. Kennedy? A. Well, we objected for a while to the terms of the payments.

Q. Were they finally adjusted to your satisfaction? A. We accepted the original proposition.

Q. Now, since that time have the provisions of the contract between the General Film Company and your exchange been carried out? A. Yes, sir. 4

Q. Were there certain deferred cash payments? A. Yes, sir.

Q. Have these payments been made as they matured? A. Yes, sir.

Q. Has there been any default in any of these payments? A. No, sir.

Q. Were you to receive certain stock as part compensation for the property you sold to the General Film Company? A. Yes, sir, I was.

- 1 Q. Did you receive this stock? A. Yes, sir.
Q. Was this stock delivered to you? A. Yes, sir.
Q. Did this stock bear interest? A. Yes, sir. This was preferred stock.
Q. This was preferred stock? A. Yes, sir.
Q. What was the interest? A. Seven per cent.
Q. Has the interest been paid since that time when due?
A. Yes, sir.
Q. After you sold to the General Film Company what business did you go into? A. Into the exhibition, or theatre business.
- 2 Q. Had you owned any theatres prior to your sale of your property to the General Film Company? A. Interested in one.
Q. What theatre was that? A. The Family Theatre, in Braddock, Pa.
Q. Have you any objection to telling us how much interest you had in the Family Theatre, at Braddock? A. I had a one-third interest.
Q. Do you recall the date of the sale of your property to the General Film Company? A. It was in October, 1910, I think. I think they took possession November 1st, 1910.
- 3 Q. Did you thereupon begin to buy theatres, or an interest in theatres? A. Yes, sir, I did.
Q. What theatres did you acquire? A. I acquired the Oakland Theatre, in Pittsburgh, the Schenley Theatre, in Pittsburgh, the Arsenal Theatre, in Pittsburgh, and the Crystal Theatre, in Braddock, and the Cameraphone Theatre in Belleview, the Cameraphone Theatre, on Fifth Avenue, in Pittsburgh, the Cameraphone Theatre, in Cleveland, the Casino Theatre, in McKeesport, and the Dreamland Theatre, in McKeesport, and the Altmeyer Theatre, in McKeesport.
- 4 The other two were owned by Mr. Rowland; he really owned them, the two in Wilkes-Barre, the Colonial, and the Rowland.
Q. You owned part of them, and were interested in the others? A. Yes, but I had a very little interest in those.
Q. What were the seating capacities of those various theatres? A. They vary from three hundred seats up.
Q. The lowest had three hundred? A. Yes, sir.
Q. Were there a number of them which had a seating capacity of three hundred? A. Yes, sir, several of them, three or four of them.

Q. What is the largest seating capacity of any one of them? A. The Rowland Theatre has about 1,200, but that is a vaudeville theatre, not a straight moving picture theatre.

Q. Part vaudeville, and part moving pictures? A. Yes, sir.

Q. Are there any other theatres which have a larger seating capacity than 300, and less than 1,200? A. Among mine?

Q. Yes. A. Yes, sir, the Arsenal Theatre has seven hundred and twenty-four.

Q. In addition to the purchase of theatres, and interest in theatres, have you since gone into any other business? A. Yes, sir.

Q. What other business? A. Film exchange.

Q. When did you go into the film exchange business subsequent to October, 1910? A. I can't give you the exact date.

Q. Can you give it to us approximately? A. I bought an interest in the Independent Film Exchange, about two years ago.

Q. Where is it located? A. On Ferry Street, in Pittsburgh.

Q. Did you buy an interest in any other exchange? A. Yes, sir, the Pittsburgh Photo-Play Company.

Q. Where is the Pittsburgh Photo-Play Company situated? A. On Ferry Street too.

Q. Is it situated at the same number Ferry Street? A. No, sir, next door.

Q. Are you interested in any other exchange at the present time? A. The Famous Players Film Company.

Q. Are those three exchanges in which you are at present interested as an owner independent, or licensed exchanges? A. Independent.

Q. From what sources do these exchanges secure their supply of motion pictures? A. The Independent Film Exchange secures their films from the Universal Film Manufacturing Company. Do you want the others?

Q. I will ask you about them. How many reels of film per month does the Independent Film Exchange take from the manufacturers you have named? A. They take twenty-one reels per week.

Q. And does this make a complete program for your customers? A. Yes.

Q. How many reels per week does the Pittsburgh Photo

1 Play Company take from the independent manufacturers?
A. Eighteen.

Q. What is the source of supply? A. The Mutual Film Corporation.

Q. Do they supply a complete program to the exhibitors who patronize the Pittsburgh Photo-Play Company? A. Yes, sir.

Q. What is the program that you furnish them, how many reels per day? A. Three.

2 Q. From what source of supply does the Famous Players Exchange secure its motion pictures? A. From the Famous Players Film Company, New York.

Q. How many reels of motion pictures per week do you secure from that source? A. We secure thirty per year—they don't have a weekly— They have another source of supply, the All Star Feature Corporation, of New York, which makes twelve.

Q. You mean by that that the Famous Players are supplying your exchange with forty-two reels a year? A. A year, yes, sir.

3 Q. These forty-two reels consist of what? A. So-called feature films.

Q. When you say "reels" do you mean forty-two subjects instead of forty-two reels? A. Yes, sir, I do.

Q. How many reels on an average do each one of these forty-two subjects contain? A. From three to six.

Q. How many subjects in the aggregate does the Famous Players Exchange secure in a year? A. Forty-two.

Q. And they average how many reels per subject? A. Three to six. They do not have any regular number.

Q. Do you have a special territory or a restricted territory in which to handle these special features? A. Yes, sir.

4 Q. Of what does that territory consist? A. It consists of Western Pennsylvania—you mean the Famous Players?

Q. Yes? A. Western Pennsylvania, and West Virginia, Ohio, Kentucky, Indiana, and Illinois.

Q. Do you have the exclusive right to supply this service to the exhibitors in the territory you have outlined? A. Yes, sir.

Q. Can the exhibitor get this service from any other source than your exchange in the territory mentioned? A. No, sir.

Q. Do you pay a price for this special service based upon

the fact that you handle it exclusively in the territory outlined? A. Yes, sir. 1

Q. And is this price higher because of the exclusive privilege which is given you? A. It is.

Q. Do the exhibitors pay you a higher price for this service than they do for the other service? A. Yes, sir.

Q. Is this higher price based upon the fact that it is exclusive service to these exhibitors and cannot be had by their competitors? A. Yes, partly.

Q. Have you any objection to telling us how many exhibitors your exchanges supply in this territory? A. Well, I can't tell you exactly, but I judge 230 or 240. 2

Q. And that is the territory to which you referred in saying you supply at least 230? A. That is in the two exchanges not the Famous Players.

Q. This is outside of the Famous Players? A. Yes, sir, our regular program in Western Pennsylvania and in West Virginia.

Q. And does each of these independent exchanges supply a complete program to exhibitors who take your service? A. Yes, sir.

Q. And when you say that there are 230 exhibitors served you mean that both exchanges serve two hundred and thirty exhibitors? A. Yes, sir, both exchanges together. 3

Q. In dealing with the independent producers of motion pictures does your exchange lease or buy motion pictures from them? A. It leases them.

Q. Do you return these leased pictures to the makers of the motion pictures later on? A. We do.

Q. How long has this practice been in vogue? A. I can't tell you exactly. I think about a year.

Q. You know that you have been returning pictures for practically a year? A. Yes, sir. I know we have been returning them to the Universal. I can't say about the Mutual. I don't know that, but I know they are leased by the Mutual. 4

Q. What are the prices that your exchanges pay for the independent motion pictures?

Mr. GROSVENOR: Objected to as immaterial.

By Mr. KINGSLEY:

Q. You may answer, Mr. Clark. A. We pay the Universal ten cents.

- 1 Q. Is that net? A. Yes, sir.
Q. You mean ten cents per foot? A. Yes, sir, and we pay the Mutual twelve cents.
Q. Is that net? A. Yes, sir.
Q. Now, let me make myself clear in this respect: you mean, when you say you pay ten cents a foot, that is after all deductions are taken off? Is there any discount? A. There is no discount.
Q. So that is a flat rate that you pay of ten cents? A. To the Universal.
- 2 Q. And of twelve cents to the Mutual? A. Yes, sir. That twelve cents went into effect January first.
Q. What was it before that? A. It was eleven cents before that.
Q. Would you say that the standing order system was an advantage or a disadvantage to the exchange? A. It is an advantage.
Q. In what respect? A. Well, you are able to program or schedule your service in advance, because you know exactly what you are going to get.
- 3 Q. Can you give an exhibitor a program in advance and deliver it to him under the standing order system? A. Yes, sir.
Q. Before the standing order system was adopted, did you have any difficulty as an exchange man, in supplying exhibitors safely? A. Yes, sir.
Q. What were your chief difficulties at that time? A. Well, we had difficulty in getting the right number of films on the days we needed them, and to get them in just when we needed them.
Q. And were you able to keep your agreements with the exhibitors under those conditions? A. Not always, no,
- 4 sir.
Q. Did you ever have complaints from exhibitors because of your inability to keep your agreements with them? A. Yes, sir.
Q. At that time was it possible for the exhibitor to advertise a program in advance with any certainty that he could produce the program on the date advertised? A. It was not.
Q. What is the situation now in that respect? A. He

can advertise now, and he gets his program when it is promised to him. 1

Q. And do they advertise now? A. Yes, sir.

Q. Is it a common practice for exhibitors to advertise a program some days in advance? A. Yes, sir.

Q. Is that true of the exhibitors served by the independent exchanges as well as the exhibitors served by the licensed exchanges? A. Yes.

Q. After the Pittsburgh Calcium Light Company sold its property to the General Film Company, did you remain in charge of the business for some little time? A. Yes, sir. 2

Q. How long did you remain there? A. About three or four months.

Q. Under what conditions did you manage the business for the General Film Company after the consummation of the sale, and by that I mean, were you restricted by definite orders from the home office or were you allowed to go ahead and transact business according to your own best judgment? A. I was allowed to transact the business as I felt like it. They did not restrict me, except in bookkeeping methods. Of course, they have a system which changed our system of books. 3

Q. Aside from that, you were permitted to order film and do business with the exhibitors? A. Yes, sir.

Q. And to make prices according to your own best judgment? A. Yes, sir.

Q. Were you ordered to take the film from all of the licensed manufacturers, or were you permitted to select such film as you saw fit? A. I was permitted to select what I wanted.

Q. Were any directions or orders ever given to you not to take the motion pictures of certain manufacturers? A. No, sir. 4

Q. Do you recall that in the Patents Company license there was a provision to the effect that an exchange should lease at least twenty-five hundred dollars' worth of motion pictures per month? A. Yes, sir.

Q. Did that provision meet with your approval or disapproval? A. It met with my approval.

Q. For what reason? A. Well, it was not possible to give a program on less film than that. It kept so many small exchanges from putting in part of a program, and so on, and made it easier for us to handle.

1 Q. As the owner of an independent exchange, or two independent exchanges, at the present time, do you find it feasible to transact business on a smaller amount of motion pictures per month than that specified in the Motion Picture Patents Company license? A. Have to buy more than that.

Q. How much do you average a month in your two exchanges? A. Well, one exchange buys eighteen reels a week, and the other one twenty-one reels. Why it is easy enough to figure it out.

2 Q. How much would that figure out, roughly speaking? A. Twenty-one would be about \$2,100 per week. Well, one orders at least eight thousand dollars' worth per month, eighty-four hundred dollars.

Q. And the other one? A. 18 reels, at 12 cents per foot.

Q. Would that be pretty nearly the same thing? A. Yes, sir, pretty nearly.

Q. About \$2,160 per week, isn't it? A. It would be about eight thousand dollars per month, yes, sir.

3 Q. Is there any minimum requirement by the Mutual or Universal at the present time with respect to renting film, on the part of an exchange? A. Yes, sir.

Q. What is their minimum requirement? A. The Mutual is eighteen with us, and the Universal, twenty-one.

Q. By that you mean per week? A. Yes, that is the number of reels per week.

Q. Now, let me see if I make myself clear. Do they insist that you rent at least that much? A. Yes, sir.

Q. At the time the release day rule was adopted, did you regard that with approval or disapproval? A. Why, I approved of that.

4 Q. What was your reason for approving of the release day rule? A. Well, it released the films, for instance, in our territory in Cleveland and Pittsburgh on the same day, and while it deprived us of shipping first run films into Cleveland, it worked the same way with Cleveland and Pittsburgh. In other words, we were then able to handle our own city, and Cleveland handled its own, with first run films.

Q. Upon what does the value of motion picture service depend? A. Principally upon the age of the film.

Q. And would you say that competition between exhibitors largely consists in striving to get newer service? A. Yes, sir.

Q. Are the prices based upon the demands of the exhibitors for newer service? A. Yes, sir. 1

Q. Does the release day rule therefore give you a point from which to reckon the price of service with some certainty? A. Yes, sir.

Q. Does the release day rule permit the manufacturer to release simultaneously throughout the country? A. Yes, sir; I understand it does.

Q. What would you say as to whether or not the release day rule prevents one exchange from getting an unfair advantage over another exchange? A. I say it does. 2

Q. What do you say as to whether, as a matter of fact, an advantage of even one hour in releasing a film might mean a considerable advantage in one exchange over another? A. I would say it would.

Q. Do you believe that the release day rule should be strictly enforced? A. I do.

Q. When it comes to shipping motion pictures to distant points, would an exchange which violated the release day rule obtain an unfair advantage over a competitor? A. Yes, sir.

Q. Do you recall that when the Patents Company license was issued, there was a provision therein providing for the return of motion pictures on the seventh month after they were leased? A. Yes, sir. 3

Q. Did you approve or disapprove of that provision? A. I approved of it.

Q. Did you have any film on hand in your exchange at the time you signed the Patents Company license? A. Yes, sir.

Q. And was some of this, old film? A. Yes, sir.

Q. How long was it after you signed the Patents Company license before you began to return film to the manufacturers? A. Seven months, I believe. 4

Q. And when you began to return film to the manufacturers, what character of film did you send back? A. I sent back the oldest stuff we had. The oldest film we had.

Q. And by that you mean the oldest stock you had on hand at the time you signed the Patents Company license? A. Yes, sir; film that was worn out.

Q. And this sort of return was accepted by the manufacturers? A. Yes, sir.

1 Q. What was the value of the film which you sent back to the manufacturers on the seventh month after signing the Patents Company license? A. Practically nothing.

Q. What was it called in the trade at that time? A. What was it called?

Q. Yes, what was it called in the trade at that time? A. Junk.

Q. Was there anything in the license which your exchange signed with the Patents Company, to prevent it from accumulating a library if you saw fit? A. No, sir.

2 Q. What has been your experience with respect to deterioration or wearing out of film in active use? A. Well, it varies very much.

Q. What would you say is the average life of film in active use? By that I mean the average physical life? A. About one hundred or one hundred and twenty days. Something like that. But it varies.

Q. What would you say as to whether film having an average use for six or seven months, is fit for further use? A. No use.

3 Q. You say it is not fit for further use? A. No, sir; it is not fit for further use.

Q. Why not? A. Well, the sprocket holes which carry it through the machine are usually in bad condition, and it is usually so scratched from the oil and dust of the machine, that it is not fit to be shown. It becomes badly scratched by the machine, in use.

Q. Do you consider that the exhibition of old, worn, scratched and practically obsolete film is a good thing for the business? A. I think it is a bad thing for the business.

4 Q. Did your exchange lose anything because of the provision requiring the return of old, worn-out film at the expiration of six months? A. No, sir.

Q. Do you know whether or not in 1907 and 1908 it was a frequent occurrence for an exhibitor to get service from two exchanges at the same time? A. I don't think so. Not from our exchange.

Q. Did you discourage the practice at that time? A. Yes, sir.

Q. Did you have, prior to the formation of the General Film Company, any difficulty with respect to conflicting

programs on the part of exhibitors served by your exchange? 1

A. Yes, sir.

Q. Will you tell us something about that? A. Well, if we gave a man a date on a picture, we did not try to schedule the films like we do now, because it was impossible. We gave a man a date on a certain picture, and he advertised it, and the opposition theatre would telephone in to the exchange that was supplying him and get the film a few days ahead of him in order to spoil his program, and he would naturally then have to substitute something else for it, after having advertised it. Sometimes they would show it on the same day. 2

Q. What was your experience with respect to two competitors who were running conflicting programs, coming to you and trying to get better service, or newer service? A. Well, of course, they would try to get newer service in order to show films before their opposition.

Q. And would they sometimes do that? A. They would. Then he got his exchange to do the same thing.

Q. Would the two of them sometimes advance their program? A. Yes, sir.

Q. Would they pay more money for it? A. Yes, sir. 3

Q. And would they sometimes, after having advanced their programs and having paid more money, find themselves in the same relative position? A. Yes, sir.

Q. Do you remember when royalties were first collected from the exhibitors by the Patents Company? A. Yes, sir.

Q. Did the Patents Company at that time collect these royalties direct from the exhibitors? A. Yes, sir.

Q. Do you recall whether or not this practice created any difficulties? A. It did.

Q. Did you make any protest or suggestion to the Patents Company regarding it? A. Yes, sir. 4

Q. What were the difficulties connected with collecting the royalties direct from the exhibitors?

Mr. GROSVENOR: You are referring to the two dollar a week royalty, I take it?

The Witness: Yes, sir.

1 By Mr. KINGSLEY:

Q. Answer. A. Well, the principal trouble was, if a man did not pay up, we had no way of telling whether he was paid or not.

Q. That is, you might go on and serve an exhibitor who had not paid his royalty? A. Yes, sir; without knowing it.

Q. He might even tell you he had paid it, when, as a matter of fact, he had not? A. Yes, sir.

Q. Did that sometimes occur to you? A. It did.

2 Q. Did it occur with sufficient frequency to become annoying? A. It did.

Q. What suggestion or recommendation did you make to the Patents Company, if any, with respect to this practice?

A. I recommended that they allow us to collect the royalties. Then we would know who was paid and who was not.

Q. And did the Patents Company subsequently allow the exchanges to collect the royalties? A. Yes, sir.

Q. Did the trouble which you have mentioned, then cease? A. Yes, sir.

3 Q. Was there anything in the license agreement which your exchange signed with the Motion Picture Patents Company, which restricted you in a geographical sense as to the territory you might serve? A. No, sir.

Q. Prior to the sale of the property of your exchange, to the General Film Company, what territory did you serve?

A. Well, we served quite a big territory, because we were as far west as Omaha. You see we had branch offices.

Q. What territory did you serve from the Pittsburgh office? A. Principally Western Pennsylvania, Ohio and West Virginia. That is, Eastern Ohio.

4 Q. And did you find it necessary, when you wished to serve points at a further distance, to open new exchanges? A. Yes, sir.

Q. Did you find that there was a geographical limit beyond which it was not profitable to ship films physically?

A. Yes, sir; that is the reason we opened the branch offices.

Q. Was your exchange, at any time, prohibited by any condition in the license agreement with the Motion Picture Patents Company, from taking on a licensed exhibitor who might have been served by another licensed exchange at another time? A. No, sir.

Q. Did this sometimes happen? A. Yes, sir. 1

Q. Did it frequently happen? A. Yes, sir.

Q. Did your exchange, prior to the sale of its property to the General Film Company, ever serve an exhibitor who was running a licensed theatre, and at the same time was running an unlicensed theatre somewhere else? A. Yes, sir.

Q. Did you ever have any difficulty on account of doing that? A. No, sir.

Q. Was there any prohibition against your doing it? A. Not that I know of.

Q. Do you observe the character and the quality of the licensed motion pictures that are now produced by the various licensed producers? A. Yes, sir. 2

Q. Have you observed them carefully from week to week since the time that you sold the property of your exchange to the General Film Company? A. Well, I have been in pretty close touch with them.

Q. What would you say as to whether the character and quality and the artistic merit of the motion pictures produced by the various licensed manufacturers have improved or deteriorated? A. I would say they have improved. 3

Q. Do you know whether or not there is competition between the licensed producers of motion pictures with respect to enlisting the good will of exhibitors, and inducing them to urge upon their exchanges, the desirability of using their brands? A. I would say there is, judging from the advertising they do in the trade papers.

Q. Do you see their advertising? A. Yes, sir.

Q. Do they advertise largely, and call attention to the merit of their particular brands? A. Yes, sir; they do.

Q. Do these advertisements urge upon exhibitors the desirability of insisting upon these brands from their exchanges? A. Yes, sir. 4

Q. Was the sale of the Pittsburgh Calcium & Light Company to the General Film Company, voluntary on your part? A. Yes, sir.

Q. What do you say as to whether or not there has ever been any standard price for service to exhibitors by the exchanges? A. There has not.

Q. Is it a matter or bargain with the exhibitors? A. Yes, sir; it is.

1 Q. And does this depend on the age of the film? A. Yes, sir.

Q. Did the Film Service Association at any time attempt to put a schedule of prices into effect? A. Yes, sir.

Q. Did the Film Service Association succeed in doing that? A. No, sir.

Q. Was the General Film Company operating in this territory prior to the sale of your property of your exchange to it? A. No, sir.

2 Q. Prior to the sale of the property of your exchange to the General Film Company, did you have any competition in this territory with unlicensed exchanges? A. Yes, I believe there was one. It did not amount to much.

Q. When was the Pittsburgh Photo-Play Company started? A. I cannot answer that. We bought the exchange about two years ago.

Q. Do you know whether the Pittsburgh Photo-Play Company was started before or after the General Film Company entered this field? A. After.

Q. Who started the Pittsburgh Photo-Play Company? A. Mr. Warner and Mr. Lande.

3 Q. And had Mr. Warner and Mr. Lande been in the motion picture business prior to that time? A. Yes, sir; they had the Duquesne Supply Company, which they sold to the General Film Company.

Q. Is the Warner you have mentioned, the Warner's Features man? A. Yes, sir.

Q. In 1908, did you regard the motion picture business as stable or unstable? A. I regarded it as rather unstable.

Q. How did you regard it in 1909 and 1910? A. As rather unstable, then, too.

4 Q. For what reasons did you regard it as unstable in these years? A. Well, on account of the competition from other exchanges. They could make a raid on your customers and take away enough in a week's time to make you run your exchange at a loss instead of at a profit.

Q. Well, couldn't you cut down your buying to adjust yourself to the new condition? A. No, we had to buy enough for a program whether we had two customers or a hundred.

Q. So that, while you might be making money with a certain number of customers, if they were materially reduced,

you would still have the same expenditures, but not the same receipts? A. Yes, sir. 1

Q. In the independent exchanges with which you are now connected, do the exhibitors select their own programs? A. No, sir.

Q. What system do you have for supplying programs in your exchanges? A. Well, we contract to give them, for instance, three reels per day, of certain makes and certain age. They have to take them after they contract for them.

Q. Is that called the lock-reel system? A. Yes, sir.

Q. Under this lock-reel system, the three reels stay together throughout their life, don't they? A. Yes, sir. 2

Q. Now, Mr. Clark, how many of your theatres are running an unlicensed program? A. I believe seven of them.

Q. And how many are running a licensed program? A. Five.

Q. Are you able to give us the names of your theatres which are running an unlicensed program, and the seating capacity of each? A. Yes—well, I don't know about the seating capacity.

Q. Well, can you do it approximately? A. Yes. The Schenley Theatre, Pittsburgh, has 300 seats; the Dreamland Theatre in McKeesport has approximately 700 seats; the Casino Theatre in McKeesport has about 300 seats; the Altmeyer Theatre in McKeesport has 1,000 seats; the Rowland Theatre in Wilkinsburg has 1,400 seats; the Crystal Theatre in Braddock has 1,100 seats. That is six, isn't it? The other one is the Arsenal Theatre, 724 seats. It runs both. 3

Q. That is the vaudeville theatre you spoke of? A. No, that is in Pittsburgh. It runs both services.

Q. You run a composite service at the Arsenal Theatre? A. Yes, sir. 4

Q. Do you find it important as an exhibitor, to get service that does not conflict with the service of competing theatres? A. Yes, sir.

Q. Mr. Clark do you, as a matter of fact, avoid conflicting service in the most of your theatres? A. Yes, sir.

Q. Will you tell us how you do that? A. Well, the film exchange looks out for that.

Q. Is that because your houses and your competitor's house take their service from the same film exchange? A. Well, not always.

1 Q. Is it frequently? A. Yes.

Q. Well, when your house and your competitor's house does not take its service from the same film exchange, is it not necessary for them to take it from exchanges having different programs in order to avoid a conflict? A. No, sir.

Q. How in that case do you avoid a conflict? A. The film exchange keeps you scheduled apart.

Q. By an agreement with the other exchange? A. I suppose so.

2 Q. Are you referring to two exchanges dealing in different programs, or to two exchanges dealing in the same program? A. The same.

Q. I am now referring to your particular theatres. When your theatres take a program from one exchange, and your competitor is taking a program from another exchange, how do you keep apart? A. You mean another exchange handling the same program?

Q. Yes? A. Well, the exchanges keep you apart.

Q. What two exchanges do you refer to? A. The General Film Company's.

3 Q. So that in reality it is one exchange, is it not? A. They have two locations here.

Q. Two branches? A. Yes, sir. They operate the exchanges practically together.

Q. Prior to the formation of the General Film Company did you have any difficulty in keeping the programs apart? A. Well, I was not in the exhibition business then, but as an exchange man, I did.

Q. Were you able to do it all the time? A. Not always, no, sir.

Q. Was there any instance where you did keep two exhibitors apart who had complained to you? A. Yes, sir.

4 Q. How did you do that? A. Well, by getting them both to deal with one exchange.

Q. You found that that was essential and necessary in order to keep them apart, did you not? A. Yes, sir.

Q. If they were dealing with two different exchanges, which had no community of interest whatever, or no desire to keep them apart, there was an inevitable conflict? A. Yes, sir.

Q. How long did you remain in charge of the General Film Company's Pittsburgh office after the sale of the Pitts-

burgh Calcium Light Company's property to the General Film Company? A. I think it was about three months. 1

Q. During that period did you increase the prices to any exhibitor? A. No, sir.

Q. Since that time have you purchased any theatre which was getting service from the General Film Company at the time you were in management of its business here? A. Purchase any theatre?

Q. Yes? A. No, I believe not.

Q. How many theatres have you now using the licensed service? A. Five.

Q. Were any of these five theatres using licensed service at the time you were managing the business of the General Film Company? A. Only one. 2

Q. Were you familiar with the price to that theatre at that time? A. Yes, sir.

Q. Has the price been increased or diminished since that time? A. The price was increased, but the service was changed.

Q. So that, it was a different price for a different service? A. Yes, sir.

Q. What kind of projecting machines do you use, Mr. Clark? A. Powers, Motiograph, and Edison. 3

Q. What kind did you handle or use when you were running the licensed exchange here in Pittsburgh? A. The same three. I believe we handle the Simplex machines now too. They were not made then.

Q. You have already testified that the price of motion pictures to the exhibitor is governed by the age? A. Yes, sir.

Q. And when you say that the price of motion pictures to the exhibitor is governed by the age, do you mean the physical age of the motion picture, or the time it has been released? A. The time that it has been released. 4

Q. When you sell motion picture service to the exhibitor do you quote him a lump sum for the whole program? A. Yes, sir.

Q. And what does an ordinary program consist of, by that I mean, how many subjects? A. Three, in this territory.

Q. In furnishing such a program do you endeavor to give a balanced program? A. Yes, sir.

1 Q. What do you mean by a "balanced program?" A. Well, a comedy, and probably a western picture, and a drama, in order to vary the program.

Q. Would it be feasible in making up this program to distinguish between the different pictures as to merit and desirability, and then fix a definite value upon each picture, and carry out the resulting bookkeeping required? A. No, sir, I don't think so.

Q. Do you find it more feasible to furnish the program in the way you are now furnishing it? A. Yes, sir.

2 Q. Do you find that exhibitors prefer the pictures of one producer over the pictures of another producer, even when they are of the same age? A. Yes, sir, to a certain extent.

Q. When you refer to the age of the motion picture what do you mean? A. Why, the age is based on the beginning, at the release date.

Q. And by that you mean the number of days it has been on actual exhibition before various audiences? A. Yes, sir.

3 Q. In referring to the age of a motion picture, do you refer to a copy, or to a subject, which has been on exhibition? A. To the subject.

Q. If a reel has not been in service at all, though the subject has been released, does the value diminish as the release age increases? A. Yes, I think it does.

Q. When an exhibitor selects a motion picture at your exchange, or at one of the exchanges under your supervision, does he pay any attention to the physical aspect or condition of the reel? A. Yes.

Q. Do they, as a rule, see the reel at all? A. On exhibition, on the screen?

4 Q. No, I mean before they take it away, the program? A. They look at the end of it when you hand it to them.

Q. But as to running it off on a screen, they don't do anything of that sort? A. No, sir.

Q. They rely entirely upon the exchange? A. Yes, sir.

Q. Was the price of the motion picture service determined in 1908 by the date of the release? A. Yes, sir.

Q. Has any other rule for the fixing of the value of the motion picture service been in effect of which you are aware? A. No, sir.

Q. Does the same rule prevail in the licensed exchanges

and unlicensed exchanges with respect to the price of motion picture service? A. I believe so. 1

Q. When numerous copies of a motion picture are in use in a given neighborhood does it lose value the more rapidly on that account? A. Yes, sir.

Q. What is the reason for that? A. Why, it is shown in so many more places in a much shorter time.

Q. Would you say that if five copies of a given motion picture were out in a given neighborhood, that the feasibility of exhibiting the subject would decrease more rapidly than if one copy were out? A. Yes, sir. 2

Q. Would you say that as the number of people who have seen a motion picture increases in a given territory, the value of the picture increases or diminishes it? A. Diminishes.

Q. Have you ever had any experience of replacing a worn, or destroyed copy of a motion picture, by a copy which has never been in actual physical use? A. Has never been?

Q. Yes, that one? A. Yes, sir.

Q. Is the price of the copy which has never been in actual physical use determined by the release date? A. Yes, sir. 3

Q. Mr. Clark, what do you mean by a "reel" in the motion picture art? A. Well, as it is used, approximately, a thousand feet of film. They do not all run a thousand feet, though.

Q. Do they vary in length? A. Yes, sir.

Q. Are some of them as low as 800 or 900 feet? A. Yes, sir.

Q. And others as high as a thousand feet, or a thousand and fifty feet, or eleven hundred, and twelve hundred and twelve hundred and fifty feet? A. Well, not very many. 4
Some run, or quite a number run, as high as eleven hundred feet, but very few at twelve hundred feet.

Q. Does the exhibitor know anything about the different lengths of the films on these reels? A. Well, he can tell by looking at the reel whether it is a short one, or a long one.

Q. Does that fact make any difference in the price he pays? A. No.

Q. Does that fact make any difference in the price which

1 the exchange pays the producer? A. I don't think so. Oh, yes, it does. They charge by the foot. It is a fact.

Q. So that a 950 foot reel might cost you \$95.00, and a 1,100 foot reel would cost you \$110, of the same maker?

A. Yes, sir.

Q. But you would include them in the program at the same price to the exhibitor? A. Yes, sir.

2 Q. I am going to ask you, Mr. Clark, a question which you may answer or not, as you like, because it goes to your private business. Is your independent exchange business profitable, or unprofitable? A. It is profitable.

Q. Are you at the present time actively competing for new customers for your different exchanges? A. Yes. Well, we have our programs pretty well filled in our schedule. If a man drops off, we go after a new one to fill his place.

3 Q. Do I understand that you are not trying to get additional or new ones just at present? A. Oh, yes, we have to try to fill up, if we have an opening. I am not familiar enough with it to tell you exactly what is doing in that line. We try to keep every day filled.

Q. What do you mean by saying your programs are "well filled in," or "filled?" A. Well, for instance, in one exchange, we have three reels per day. They run up to a hundred and twenty days, and after that we don't consider them fit to put on a schedule, and we frequently drop it there; and if there is any open dates in between, of course we solicit customers to fill in there.

Q. Are your programs now in constant use? A. Yes, sir. There may be an open date occasionally.

4 Q. If you took on a considerable number of new exhibitors would you be compelled to make a larger investment? A. Yes, we would be compelled to buy eighteen more reels.

Q. Do you feel at the present time that you have all the exhibitors you can safely serve with eighteen reels? A. Just about, yes, sir.

Thereupon at 12:50 o'clock P. M. the hearings were adjourned until 2 o'clock P. M., to be resumed at the same place.

PITTSBURGH, PA., January 5, 1914, 2 P. M.

1

The hearings were resumed, pursuant to adjournment, at 2 P. M., January 5, 1914, at the Fort Pitt Hotel, Pittsburgh, Pennsylvania.

The appearances were the same as at the morning session.

JAMES B. CLARK, being recalled, already sworn, deposed as follows:

Further direct examination by Mr. KINGSLEY:

2

Q. Mr. Clark, has it been your experience at any time that exhibitors have taken unlicensed service in preference to licensed service, thinking that it was to the best interests of their business to do so? A. Yes, sir.

Q. Has that happened frequently or infrequently? A. Well, I could hardly answer that. I am not in close touch enough with exhibitors to know, but I know, for instance, in one of my own houses, I done that because I found it was more profitable.

Q. Did you do a better business after making the change? A. Yes, sir; I did.

3

Q. You found it to your advantage to do so? A. Yes, sir.

Q. And do you have any difficulty in carrying on a successful business in your independent houses? A. No, sir.

Q. Now, you have some corrections, I understand? A. I want to make a correction on my testimony this morning when I stated that we were paying ten cents per foot to the Universal. We are paying eleven cents per foot. That is all.

Cross examination by Mr. GROSVENOR:

Q. Mr. Clark, you took an important part in the formation of the Film Service Association, did you not? A. Yes, sir.

4

Q. You were present in November, 1907, at a meeting in this hotel, where some of the manufacturers and a number of the rental exchange men met to consider the formation of an association which was ultimately formed and called the Film Service Association? A. Yes, sir.

Q. After that meeting, there were various adjournments, until a second meeting was had at Buffalo in February, 1908,

1 at which the officers were elected, and you were made President? A. Yes, sir.

Q. And the Association was at that time actually formed? A. Yes, sir.

Q. And there were a large number of the manufacturers present at Buffalo in February, 1908, were there not? A. That is the only meeting that was in Buffalo, isn't it?

Q. Yes. A. Yes, sir; I remember that.

2 Q. And the manufacturers and the rental exchange men worked together in order to arrive at an arrangement which would be agreeable to both, that is, to rental exchange men, and to the manufacturers? A. Yes, I think they did.

Q. You testified on direct examination that in your judgment the business of the rental exchanges was in an unstable condition about that time? A. Yes, sir.

Q. And one of the purposes, or the principal purpose in forming the Film Service Association, was in order to put the business on what you deemed to be a stable basis?

3 Mr. KINGSLEY: I object to the question on the ground that the witness did not make that statement. It seems to be implied by the question.

Mr. GROSVENOR: The question does not say that he does. Please read the question.

The Examiner repeats the question, as follows:

"Q. And one of the purposes, or the principal purpose in forming the Film Service Association, was in order to put the business on what you deemed to be a stable basis?"

4 The Witness: Yes.

By Mr. GROSVENOR:

Q. You testified on direct examination that the Film Service Association attempted to put a schedule of prices into effect? A. Yes, sir.

Q. That was one of the purposes in forming the Association? A. That was a matter that came up after the formation.

Q. It was one of the purposes or objects you had in mind

as a thing you hoped could be accomplished by forming an association? A. No, sir; it was not. 1

Q. Well, you attempted to accomplish that immediately after the formation of the Association, did you not? A. No, it was some time afterwards. Just how long, I could not state.

Q. The Biograph people refused to co-operate with the Film Service Association and the other manufacturers in February, 1908, is that not true?

Mr. KINGSLEY: I object to that as calling for a conclusion, as to what the Biograph Company may have done, and being beyond the knowledge of the witness. 2

The Witness: Well, I don't know.

Mr. GROSVENOR: Read the question to the witness.

The Examiner repeats the question to the witness, as follows:

"Q. The Biograph people refused to co-operate with the Film Service Association and the other manufacturers in February, 1908, is that not true?" 3

The Witness: I cannot say whether it is true or not. I don't remember any such circumstances.

By Mr. GROSVENOR:

Q. Well, didn't the members of the Film Service Association, the rental exchanges, agree to buy film only from the Association of manufacturers and importers who formed the so-called Edison licensees? A. I believe so, yes, sir.

Q. Did the Biograph Company become one of the Edison licensees? A. I don't know. 4

Q. Don't you know, Mr. Clark, that warfare began right away, in February, 1908, between the Biograph people and the Edison people, that is the Edison licensees, because the Biograph Company did not join in with the others?

Mr. KINGSLEY: I object to the question as calling for a conclusion of the witness as to the reasons which may have caused this conflict between the Bio-

- 1 graph Company and the Edison licensees, and being clearly beyond his knowledge.

The Witness: I know there was conflict, but I don't know that it was at that time. I don't have the time in my mind.

Mr. KINGSLEY: You don't know the reasons for the conflict, do you, as far as the Biograph Company is concerned?

- 2 The Witness: No. It was supposed to be over patents, I suppose. That was the talk at that time.

By Mr. GROSVENOR:

Q. When did it begin? Wasn't it about that time? A. I cannot really say. I don't know.

Q. When was this trouble over patents, which you testified to on direct examination? A. Well, that was previous to the formation of the Motion Picture Patents Company.

Q. And it was in the year immediately preceding it, wasn't it? A. I believe so.

- 3 Q. And the year immediately preceding the formation of the Patents Company was the year 1908, that is, the period of the existence of the Film Service Association? A. Yes, it was about that time, I think.

Q. Now, don't you know, Mr. Clark, that this patent trouble became acute after the formation of the Film Service Association, when the Biograph Company refused to join in with the other manufacturers? A. Well, I should say yes, but I am not positive.

- 4 Q. Then it is your best recollection, that it was after the Buffalo convention, and the forming of the Film Service Association, that the warfare broke out between the two camps? A. Yes, sir; I think it was.

Q. Now, had you ever heard of the Latham patent before February, 1908? A. I can't say that.

Q. Did you ever hear of the Latham patent before the Biograph Company acquired it? A. I don't believe I did.

Q. Are you actively in charge of these rental exchanges in Pittsburgh in which you stated on direct examination, you are interested? A. No, sir.

Q. What is your connection with them? A. I am a Director and stockholder.

Q. Are you the principal owner? A. No, sir.

Q. Well, are you an executive officer? A. No, sir.

Q. Do you go to the offices of either of these companies every day and have a desk there, in order to supervise the business of the companies? A. No—I go to the offices every day, but I do not have a desk.

Q. You are not directly in charge of the management? A. No, sir—in charge of the management? Well, the managers really report to me every day. I go over any matters that come up. They always take them up with me every day.

Q. Do they report to you the number of theatres they are supplying? A. They supply a weekly report to me. Yes, sir. In writing.

Q. These theatres, as I understand, are located in Pennsylvania, West Virginia, and some of them in Ohio and Maryland? A. No, sir; not in Maryland.

Q. None in Maryland? A. I don't believe so.

Q. Are any in Ohio? A. Yes, there is a few in Ohio, but a very few.

Q. And any in New York? A. No, sir.

Q. At the time you sold out in October, 1910, you knew, did you not, that the General Film Company was acquiring a large number of the rental exchanges in the United States? A. I knew they had acquired some. I don't know how many.

Q. You knew they had acquired a number in different parts of the country? A. Yes.

Q. You knew also, that the various licensed manufacturers were interested in the General Film Company? A. Yes, sir.

Q. Had the General Film Company established a branch at Pittsburgh at that time? A. No, sir.

Q. If the General Film Company had established a branch at Pittsburgh at that time instead of buying you out, wouldn't that company have had a decided advantage in doing business, over your company, by reason of its greater resources, and the fact that the ten licensed manufacturers were interested in it?

1 Mr. KINGSLEY: Objected to as incompetent, immaterial and irrelevant; as remote, speculative, and conjectural; as calling for a conclusion, and beyond the competency of the witness.

The Witness: I would say they would, yes, sir.

Q. Did that fact have any influence upon you in making you willing to sell out?

2 Mr. KINGSLEY: Objected to as incompetent, immaterial and irrelevant.

The Witness: Well, I cannot say that it did. They had not opened any at that time, and had not threatened to open any, and we thought the best thing to do was to sell. We had a reasonable price for the place, and in fact, never gave that much consideration.

By Mr. GROSVENOR:

Q. But it was one of the circumstances that was in your mind, or one of the elements that you considered? A. Sure. Yes, sir.

3 Q. You testified on direct examination respecting the negotiations with Kennedy, that you objected for a while to the terms of the payments? A. Yes, sir.

Q. What were those terms? A. The cash end of the deal was to be divided into twenty payments.

Q. Extending over a period of five years? A. Yes.

Q. And payments of lump sums without interest? A. No, sir; with interest.

Q. Well, was that term of the sale modified because of your objection? A. No, sir.

4 Q. So you finally accepted the original proposition? A. Yes, sir.

Q. As I understand your direct examination, at the time you took out a license as a rental exchange from the Patents Company, you understood that the conditions of the license agreements were to be lived up to? A. Yes, sir.

Q. And that was impressed upon you? A. Yes, sir.

Q. How did you happen to sell out to Kennedy? How did the matter come up? A. Mr. Waters telephoned me from New York that Mr. Kennedy wanted to see me to

talk over the selling of our exchanges, and Mr. Rowland and I made an engagement for a certain day and a certain time, and we went down. 1

Q. The matter was first broached, then, by the General Film Company? A. Yes, sir.

Q. And when you went down from New York, what did you do? A. We went to the office of the General Film Company at 10 Fifth Avenue, and met Mr. Kennedy.

Q. What did he say? A. Well, I cannot remember exactly what he said. He wanted to know if we were ready to talk sale, and we told him we were, and he outlined the price and the terms, and so on, and we asked him for a little time to consider it. We thought it over that night, and accepted it the next day. 2

Q. And the proposition was accepted by you as made to you by him? A. Yes.

Q. You say you today own five licensed theatres? A. Yes, sir. That is, I don't own them outright. I am interested in those theatres.

Q. Please give the location and size of these five theatres? A. The Oakland Theatre in Pittsburgh is 300 seats. The Cameraphone Theatre in Belleview is 600 seats. The Cameraphone Theatre on 5th Avenue in Pittsburgh is approximately 400 seats. The Arsenal Theatre on Butler Street, 724 seats. That theatre uses licensed service, but also uses independent features in connection with it. The other theatre is the Family Theatre in Braddock, Pa. About 700 seats. 3

Q. The General Film Company today owes you for the sale of your business, that is, some of these payments running over five years, have not yet been made? A. No, sir, they have not.

Q. And do you hold the notes of the General Film Company in those amounts? A. No, there is a sort of contract. 4

Q. Are you the holder of any of the preferred stock of the General Film Company? A. Yes, sir.

Redirect examination by Mr. KINGSLEY:

Q. You say, Mr. Clark, that some of the payments owing you by the General Film Company have not yet been made? A. Yes, sir.

- 1 Q. They are not yet due, are they? A. No, sir.
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HARRY W. SCHERER, a witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposes as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Scherer? A. Johnstown, Pennsylvania.

- 2 Q. How long have you lived in Johnstown, Pennsylvania? A. Thirty-nine years.

Q. In what business are you now engaged? A. Theatrical business and moving picture business.

Q. How long have you been in the moving picture business? A. Between six and seven years.

Q. Are you connected with or do you own any theatres in Johnstown? A. We own the Cambria Theatre, a dramatic house, and lease the moving picture house.

Q. You operate a moving picture house under a lease? A. Under a lease.

- 3 Q. Are you the chief owner? A. That is, the lessee.

Q. I mean, of the business? A. Scherer & Kelly is the firm.

Q. Are you the chief owner in the firm of Scherer & Kelly? A. Yes.

Q. During the six years you have been in the business, from what exchanges have you been taking service? A. From the General Film Company, with the exception of about three months when we went over to the Independent.

Q. When did you first go into the motion picture business? A. Six years ago—between six and seven.

- 4 Q. And what is the name of the theatre that you had six years ago? A. Park Family Theatre.

Q. What was the seating capacity of the Park Family Theatre? A. At that time it was about 600.

Q. What is its seating capacity now? A. About 900.

Q. From what exchange did you take service when you began to operate the Park Family Theatre six years ago?

Mr. GROSVENOR: I object to this question as

too remote in time, and having no bearing on any 1
of the issues.

The Witness: The Calcium.

By Mr. KINGSLEY:

Q. The Pittsburgh Calcium Light Company? A. Yes.

Q. How long did you take service from the Pittsburgh Calcium Light Company? A. About three years.

Q. And afterwards, did you take service from the General Film Company? A. I went over to the independents 2
for three months. I am trying to think of the firm. It was an independent concern. For three months. And then I went back to the General Film Company.

Q. Do you recall at what time you took service from an independent exchange? A. About three years ago.

Q. Was this shortly after the General Film Company had purchased the stock and supplies of the Pittsburgh Calcium Light Company? A. It was before that. Before the General Film Company had purchased it.

Q. Then you left— A. The Calcium Light.

Q. Then you left the Pittsburgh Calcium Light Com- 3
pany and took independent service? A. Yes.

Q. For about how long a time would you say? A. About three months.

Q. During the time that your theatre was supplied by the Pittsburgh Calcium Light Company, were you able to advertise a program in advance, and to exhibit the program on the day advertised? A. Not at first.

Q. At what time were you able to do this? A. Well, toward the latter part of our relations with the Calcium Light Company.

Q. Had you made any complaints to the Pittsburgh Calcium Light Company with respect to inability to keep your service clear? A. Yes. 4

Q. Had you had difficulty with respect to keeping your service clear? A. Well, we never had any difficulty with keeping it clear. The reason we wanted the service was so that we could advertise. We have never had any trouble in keeping our service clear.

Q. Your difficulty then was in respect to having a defi-

1 nite fixed program so that you could announce it in advance? A. So that we could announce it in advance, yes.

Q. How many years did you operate the Park Family Theatre before you were able to do that? A. About two and a half years.

Q. When was it that you began to take service from the General Film Company? A. Ever since they have been in business.

Q. Have you been able to advertise a program in advance since you have taken service from the General Film Company? A. Yes, I think all of the entire time.

2 Q. Have you been able to exhibit the program on the day designated in your advertisements? A. Yes.

Q. Have you been able to select a program in advance while doing business with the General Film Company, or have you left the selection of the program to the General Film Company? A. We leave that to selection by them. They lay out a program for us.

Q. Do you ever make requests for a special subject in advance? A. Very seldom.

Q. When you do, are your wishes gratified? A. Yes.

3 Q. Does the General Film Company show a desire to aid you when you desire to modify your program? A. Always.

Q. In what business were you engaged before you began the moving picture business? A. Theatrical business.

Q. How long were you in the theatrical business? A. About 15 years.

Q. Do you operate the motion picture business on the same general lines as you did the theatrical business? A. Practically, yes.

4 Q. Does the General Film Company have a special agency in Johnstown? A. They are represented there.

Q. Who represents them there? A. J. G. Foley.

Q. Do you do business with Mr. Foley with respect to the service from the General Film Company? A. No.

Q. Did you at any time? A. Well, he would look after our interests.

Q. And has he co-operated with you in seeing that you had the sort of a program that you wanted? A. Yes, sir.

Q. You have never been bothered, I think you said, by conflicting programs? A. No.

Q. How did you avoid that? A. Through Mr. Foley

taking an interest in the different houses. Getting us lined up whereby we would never interfere with one another. 1

Q. In other words, Mr. Foley, representing the General Film Company, assisted you and your business competitors in arranging so that you would not have a conflict of program? A. Yes.

Q. Was that true at any time during the Pittsburgh Calcium Light days? A. No, sir.

Q. Do you now advertise programs in advance? A. Yes, sir.

Q. Do you expend money in advertising them? A. Yes. 2

Q. Did you find it possible to do this before you began getting a service that you could depend upon? A. No, sir.

Q. What service did you use during this period that you were taking service from the Pittsburgh Calcium Light Company? A. We ran three reels at each program, running from a week to 30 days.

Q. Is a three-reel program a complete program in your neighborhood or vicinity? A. At the present time we are running four.

Q. What is the general rule in your vicinity? A. In our town, four. 3

Q. How often do you change a four-reel program? A. Every other day.

Q. That means twelve pictures a week, does it not? A. Twelve pictures a week.

Q. A three-reel program every day is the general rule, is it not, in other towns outside of Johnstown, or don't you know that? A. That I don't know.

Q. Did the three-reel program that you had when you were taking service from the Pittsburgh Calcium Light Company consist of three reels every other day? A. Every other day, yes. 4

Q. So that now you are getting one-third more reels than you did prior to the formation of the General Film Company? A. Yes, sir.

Q. What prices were you paying to the Pittsburgh Calcium Light Company for the three-reel service, every other day? A. I think it was around \$65.00.

Q. What prices are you paying the General Film Company for the four-reel service every other day? A. \$100.00. But they are earlier releases.

1 Q. How much earlier? A. We run now from a week to about 28 days.

Q. What did you run before? A. I think it was about ten days to thirty days—to 45 days.

Q. Has the price of motion picture service to you been increased since you began taking service from the General Film Company? A. Only when I made changes to better service.

2 Q. Is the price at present, when you consider the earlier age of the releases and the increased number of motion pictures, any higher than it was when you were taking service from the Pittsburgh Calcium Light Company? A. I should think that it would be about the same.

Q. Are there any independent houses in Johnstown? A. Two.

Q. How many licensed houses are there? A. Five. Six including the vaudeville that runs the licensed pictures.

Q. Is the Vaudeville Theatre one which gives most of its entertainment as vaudeville? A. As vaudeville. Three moving picture theatres give licensed pictures.

3 Q. How long have the two unlicensed houses been running in Johnstown as independent? A. At least three years.

Q. Do you know the seating capacity of each? A. Approximately I would say, one has 600, the other about 250.

Q. What do you say as to whether the quality of licensed pictures has improved or deteriorated since you have been exhibiting them? A. Greatly improved.

Q. Are you solicited by the independent manufacturers or exchanges, from time to time, to change your service? A. Only by agents of certain feature pictures.

4 Q. Do you run any feature pictures? A. That is, outside of the licensed?

Q. Yes. A. Just the past two weeks I have.

Q. Did you make any special arrangement to run these? A. Simply wrote them that I was going to put in the two pictures each Wednesday and Thursday.

Q. How long did you exhibit them? A. Two days each.

Q. Did you make any change in prices? A. Yes, sir; I raised my prices.

Q. Did you do a good business while you were showing these pictures? A. Yes. A good business.

Q. What were these pictures, Mr. Scherer? A. The first picture was "Arizona." The second was Mrs. Fiske, in "Tess of the D'Urbervilles."

Q. Do you know whether the licensed producers of motion pictures advertise or not? A. Do the licensed pictures advertise?

Q. Yes. Do the licensed producers of motion pictures advertise their products? A. Oh, yes.

Q. Do you receive circulars from the licensed producers from time to time? A. Yes.

Q. Do the representatives from the independent exchanges when they solicit you from time to time, offer you any inducements in the way of prices? A. No.

Q. Do they offer you a complete service? A. Well, I have never been asked or solicited by an exchange. The only independent people who have ever come to see me would be some special large picture that was gotten out. Some special feature picture.

Q. At the time that your theatre was using the unlicensed service, did you have a complete program of unlicensed pictures? A. Yes, sir.

Q. How long did you say you ran those? A. About three months.

Q. Who arranged the program for you when you took the independent service? You yourself, or the independent exchange? A. The exchange.

Q. Did you know what you were going to get when you were taking the service from the independent exchange? A. No, sir.

Q. What kind of projecting machines are you now using? A. Powers.

Q. Do you know the numbers? A. I think they are 6A. I am not positive.

Cross examination by Mr. GROSVENOR:

Q. Mr. Scherer, did you say that you have two theatres today in Johnstown? A. That is a dramatic house and a moving picture house.

Q. You show pictures in only one house? A. In only one, yes.

Q. And you have been an exhibitor for six years? A. Yes.

- 1 Q. Since the Patents Company was formed in 1908, as I understand your testimony on direct examination, you have shown independent pictures only three months? A. Not since the General Film Company has been in existence. That was before the General Film Company was in existence.

Mr. GROSVENOR: Read the question, please.

The Examiner repeats the question to the witness, as follows:

- 2 "Q. Since the Patents Company was formed in 1908, as I understand your testimony on direct examination, you have shown independent pictures only three months? A. Not since the General Film Company has been in existence. That was before the General Film Company was in existence."

The Witness: Yes.

By Mr. GROSVENOR:

- 3 Q. How did you come to take on the independent pictures for those three months? A. I had an argument with the Calcium Light management as to my advertising a certain picture. I was to run this certain picture exclusively in Johnstown, a Biograph picture. And I advertised that my house was the only one in Johnstown that those Biograph reels could be shown, or the Biograph releases. They objected to me advertising that, and I told them unless I could make that a feature, that I would rather go over to the independent people.

Q. And so you did? A. And so I did.

- 4 Q. And why did you give up the independents three months later? A. I was not doing the business with the independent pictures that I was doing with the trust pictures, or with the—

Q. (interrupting): That is, your trade fell off when you began showing the independent pictures? A. The independent pictures, yes.

Q. And therefore, as a result of your experience at that time, you felt it advisable to show the licensed pictures ever since then? A. Yes, sir.

Q. And you feel that it is necessary to do so today in order to run a profitable house? A. Yes, sir. 1

Q. Are features an important part of the program in Johnstown? A. Yes.

Q. Were you using a Powers machine when the Patents Company was formed in December, 1908? A. Yes.

Q. From whom had you bought that machine, do you recall? A. From the Calcium Light people.

Redirect examination by Mr. KINGSLEY:

Q. At the time that you were exhibiting unlicensed motion pictures in your theatre in Johnstown, were there two other theatres showing unlicensed pictures at the same time? A. I think there was one. I am not positive. 2

Q. At any rate, there are two now? A. There are two now.

Q. And how many showing licensed? A. Three straight picture houses.

Recross examination by Mr. GROSVENOR:

Q. And two more that show licensed pictures, but in connection with vaudeville? A. Yes. 3

Redirect examination by Mr. KINGSLEY:

Q. Are there two more, or one more? A. Two more.

CHARLES A. FEINLER, the next witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY: 4

Q. Where do you live, Mr. Feinler? A. Wheeling, West Virginia.

Q. How long have you lived in Wheeling? A. Forty-five years.

Q. In what business are you engaged in Wheeling? A. Theatrical business.

Q. How long have you been in the theatrical business? A. Twenty years.

- 1 Q. Do you own a theatre there now? A. Yes, sir.
 Q. How long have you owned this theatre? A. Six years it will be in January.
 Q. What is the seating capacity of your house? A. Sixteen hundred and some odd.
 Q. What is the character of amusement that your theatre furnishes? A. Well, I have more than one theatre there. There is one theatre that I own, that is the Virginia Theatre, the 1600 house.
- 2 Q. And what is the character of the amusement furnished by the Virginia Theatre? A. I have been running moving pictures there for—let me see—just two years and a half, now.
 Q. Do you run moving pictures exclusively, in the Virginia Theatre? A. Yes, sir.
 Q. What other houses do you own or have an interest in? A. The Colonial Theatre.
 Q. What sort of a house is that? A. Moving picture theatre.
 Q. Entirely moving pictures? A. Yes.
 Q. Is that also located in Wheeling? A. Yes, sir.
- 3 Q. What is the capacity of the Colonial Theatre? A. About 900.
 Q. How long has that been exhibiting moving pictures exclusively? A. Well, it will be two years old in February. The 3rd of February, it was opened.
 Q. Have you had any other experience in exhibiting motion pictures to the public except in connection with these two theatres? A. Yes, sir.
 Q. What was that? A. The Court Theatre in Wheeling, which I am manager of.
- 4 Q. And how long has that theatre been exhibiting motion pictures? A. Well, they just exhibit feature pictures there between the regular productions. Whenever we can get some big feature of some kind.
 Q. How long has it been doing that? A. About a year.
 Q. What is the name of that theatre, did you say? A. Court Theatre.
 Q. Were you ever connected with the Grand Theatre? A. Yes, sir.
 Q. Where was that located? A. Located corner 12th and Market Streets in Wheeling.

Q. Was that a motion picture theatre? A. It was a combination house, but I converted it into a motion picture house the last two years it was in existence.

Q. At what time did you convert that into a motion picture house? A. Well, 1909—1908. Somewhere along that.

Q. What was the seating capacity of the Grand? A. 1,000, about.

Q. So that, you first commenced exhibiting motion pictures to the public in the Virginia Theatre, in 1908? A. No, in the Grand I first started.

Q. I see. A. Then I followed up after the Grand, at the Virginia. Afterwards, I lost the lease of that, and they tore the building down, and remodeled it.

Q. From what exchange did you take your pictures when you began exhibiting motion pictures to the public? A. From the Pennsylvania—Columbia Film Exchange.

Q. Do you know whether or not that was a branch of the Pittsburgh Calcium Light Company? A. I think it was.

Q. How long did you continue taking motion pictures from that exchange? A. Well, I started with them, and ran pictures with the vaudeville that I had at the Grand at that time, and then, later on, I ran pictures exclusively.

Q. How long did you stay with the Pennsylvania Columbia Film Exchange? A. I was with them up to the time the General Film Company bought them over.

Q. And then, did you continue to take service from the General Film Company? A. Yes, sir.

Q. What service do you take at the present time? A. The General Film Company service.

Q. By that I mean, what sort of a program do you take? A. I use four reels at each house.

Q. Does that mean four reels every other day? A. I say each house; I mean at the Colonial and Virginia.

Q. Four reels every other day? A. Four reels every day at each house.

Q. Making 24 reels a week at each house? A. Yes, sir.

Q. What is the standard service in this territory? A. 24 reels.

Q. A great many houses run a 3 reel program, do they not? A. I understand they do, but not around Wheeling. They all run 4 around there.

1 Q. At the time you went into the motion picture business, had you heard anything about law suits between the various interests with respect to patents? A. No, I did not pay much attention to that.

Q. I don't mean whether you paid much attention to it or not, but had you heard in general, whether or not there was any litigation? A. Yes.

Q. Was there such a rumor in the trade? A. Yes.

2 Q. What percentage of the motion picture service that you exhibit would you say consists of plays and dramatic entertainment? A. Well, I would say about nine-tenths, and possibly stronger than that.

Q. Prior to your taking service from the General Film Company, were you able to advertise a program in advance, and to exhibit the program on the day designated in your advertisement? A. No, sir.

Q. Did you have any difficulty with respect to keeping your service clear at that time? A. No, I did not.

Q. But you did find it impossible to advertise a program in advance with any certainty of delivering it? A.

3 Oh, yes.

Q. Are you now able to advertise a program in advance? A. Yes, sir.

Q. How long have you been able to do so? A. Over a year.

Q. Do you, as a matter of fact, advertise in advance? A. Yes.

Q. Do you have any difficulty now with respect to keeping your shows clear? A. No, sir.

Q. Do you make up your program yourself, or do you permit the General Film Company to make it up for you?

4 A. The General Film Company fixes up the programs for us.

Q. Do you ever ask for certain special films? A. I have asked for them, yes.

Q. And have you been able to get them from the General Film Company? A. Whenever they had them, I could get them, yes.

Q. Have they shown a desire to co-operate with you in furnishing the sort of a program and the service that you desire? A. Yes, sir.

Q. Has the price of motion picture service to your the-

atres been increased by the General Film Company since you have been taking service from it? A. No, sir. 1

Q. Was the price of your motion picture service increased at any time by the Pittsburgh Calcium Light Company before you began to take service from the General Film Company? A. Yes, sir.

Q. In what respect was that? A. Well, I paid as high as \$100.00 a week for my service, in fact I paid \$75.00 a week for my service up to about a little over a year ago. I was taking for one house.

Q. Then you began taking for two houses? A. Then I began taking for two houses. 2

Q. What rate did you pay for the two houses? A. Sixty dollars a week for each house.

Q. Was it the same service, four-reel service? A. Well, I was getting four reels of clear pictures at that time.

Q. And you were paying \$100.00? A. Yes, sir.

Q. What sort of a service did you get later for a smaller sum? A. I got service that was satisfactory for \$60.00; 3 clear pictures, and a repeater repeated back and forth.

Q. What was the increase that was made in the price of your program by the Pittsburgh Calcium Light Company? A. I asked them what their rate was. I had no way of ascertaining the rate—their regular rates per film, and they set a price of \$100.00. 3

Q. These were all clear pictures, these four? A. Yes, but they were rather old, because we did not have much opposition, and it did not make much difference to me, as long as they were clear all the time.

Q. What do you mean by a clear picture? A. A picture that has never been shown in the town before.

Q. Is one of your pictures now, you say, a repeater in each program? A. Yes. 4

Q. It has been shown in the town before? A. In my house. I repeat from one house to the other.

Q. You yourself have been the repeater in one of your houses? A. Yes, sir.

Q. So that this fourth picture is taken from one program to the other? A. Yes.

Q. So that as a matter of fact, where you were getting four new pictures a day, you are now getting only $3\frac{1}{2}$, if you average the two houses? A. Yes.

1 Q. Do any of your competitors take service from the same exchange as you do? A. Yes, sir.

Q. Does the exchange keep you clear from them? A. Yes, sir.

Q. Do you have any complaint at all in respect to that? A. No, sir.

Q. Have you observed during the period that you have been exhibiting motion pictures, whether or not the character and the quality and artistic merit of the pictures have improved or deteriorated? A. They have improved.

2 Q. You think the pictures have improved? A. Yes, sir.

Q. Do the licensed producers of motion pictures advertise their products? A. Yes, sir.

Q. Do you receive circulars from time to time in the mail from them urging you to insist upon certain brands from your exchange? A. Yes, sir.

Q. What kind of projecting machine are you using? A. Powers.

Q. Do you know the models? A. Six-A.

Q. What have you used besides those? A. I used an Edison machine.

3 Cross examination by Mr. GROSVENOR:

Q. You have two moving picture theatres in Wheeling, and each of them runs the so-called licensed film? A. Yes, sir.

Q. Is the Virginia Theatre in Wheeling which seats 1,600, and is one of the two you own, the largest theatre there? A. Yes, sir.

Q. Have you ever tried the unlicensed product in either of these theatres? A. Yes, sir.

4 Q. When did you do that? A. I used the unlicensed pictures at the Colonial Theatre when I opened it February 3rd, 2 years ago. And I exhibited the pictures for six or seven months until I almost drove everybody away from the place, and then I had to get busy, because the people wanted the licensed pictures.

Q. So in your judgment it is necessary for you to have the licensed pictures in order to run these two houses profitably? A. Yes, sir.

Q. How many motion picture houses are there in Wheel- 1
ing? A. There is 12.

Q. And some of those, houses which vary the motion pic-
tures with vaudeville? A. Well, I will say 14. There are
two others, vaudeville houses, which use pictures also.

Q. How many of this total number exhibit the licensed
film? A. Seven.

Q. Seven of the twelve? A. Yes.

Q. Are special features an important part of the pro-
gram, owing to the development of the business? A. Not
necessarily. We use them as a sort of inducement—we use 2
it, in a way, to increase the price on a special day, to put in
a feature.

Q. And put in as an extra advertisement? A. Yes, sir.

Q. I did not understand your statement on direct ex-
amination that nine-tenths of your entertainment was dra-
matic. What did you mean by that? A. Why, little play-
lets, you know; dramatic playlets, and so forth.

Q. That is to say, what is known as scenic films or topi-
cal films, comprise only about one-tenth of your entertain-
ment? A. Scenic and educational pictures, and so forth.

By Mr. KINGSLEY: 3

Q. How many unlicensed houses are there in Wheel-
ing? A. There are five regular moving picture houses, and
two vaudeville houses, running unlicensed pictures.

Q. Do you know the seating capacity of the five un-
licensed houses? A. Yes, I could give it, about.

Q. Could you give them approximately? A. The Garden
Theatre has 500 seats. The Home Theatre has 300, the
Southern Theatre has about 750. Oh, yes, there is the
Lyric, it has about 450, and the Lyceum, about 350. That 4
is as near as I can give them. I have just been told about
that.

Q. Do you know the seating capacity of the two vaude-
ville houses? A. Yes, the Orpheum Theatre seats about a
thousand, and the Victoria seats about 650.

- 1 Thereupon JAMES W. HUNTER, the next witness called by defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. Mr. Hunter, where do you live? A. I live in Wilksburg, Pa.

Q. How long have you lived there? A. About nine years or ten years this Fall.

- 2 Q. In what business are you engaged? A. Well, I am in the moving picture business, and I am connected with the Joseph Horne & Company dry goods store.

Q. How long have you had an interest in the motion picture business? A. Well, I have been interested at two different times.

Q. Will you tell us when you first began to have an interest in the motion picture business? A. The first time I commenced to take an interest in the motion picture business was in 1909.

- 3 Q. Did you own or operate a theatre at that time? A. I owned a half interest in one, but it was run in my brother's name.

Q. What was the name of the theatre? A. The Wilkins.

Q. How long was the Wilkins run by your brother or under his name? A. For sixteen months.

Q. What did you do with it then? A. Sold it.

Q. Do you know about what time you sold it? A. I sold it in, I think it was, either in April or May. I forget now, but in the next year—it was 1910.

Q. What did you do then? A. I was, at the same time in the antique business.

- 4 Q. Did you get back into the motion picture business again shortly? A. I had been before with McCreary & Company of Pittsburgh. I sold out my store to go back with McCreary & Company. I was with these people about a year and six months, I guess, or eight months, and I went with Horne's then, but while I was with McCreary & Company I put in this other Nickelodeon in Wilksburg that I am now running, and that was in 1913.

Q. Was this a theatre? A. A moving picture theatre only.

Q. What was the name of this moving picture theatre that you had in 1911? A. The Doris. 1

Q. What was the seating capacity of it? A. At that time I think 200 seats, and now 344.

Q. When you were operating the Wilkins Theatre, or interested in it, from what exchange was it taking motion pictures? A. We took for about two months from the Duquesne Amusement Company.

Q. Yes? A. And from there we went to the Pittsburgh Film Company.

Q. Was that the Pittsburgh branch of the Pittsburgh Calcium Light Company? A. Yes, sir, that was their branch; and after we were in there awhile they added the Columbia branch to it, and sold it. 2

Q. Was that a licensed or unlicensed exchange? A. Licensed.

Q. Do you know whether or not it was an Edison licensee at one time? A. That I couldn't say.

Q. Since you have been interested in the Doris Theatre from what manufacturers has the Doris Theatre taken motion picture service? A. We opened with the independent, from the Pittsburgh Photo-Play. 3

Q. How long did you take service from the Pittsburgh Photo-Play? A. About four or five months.

Q. From whom did you then take service? A. From the General Film Company, the Columbia branch.

Q. Is the Doris Theatre able to select a program in advance and advertise the same? A. Yes, sir, we do not select our own program.

Q. Is it able to have a program assigned to it, and to advertise the same and to exhibit it on the date designated in the advertisement? A. Yes, sir.

Q. Does it advertise its program in advance? A. Yes, sir, it advertises its program ahead. 4

Q. Do you get satisfactory service from the General Film Company? A. Yes, sir.

Q. Do you ever make requests of them for special service or special features? A. Yes, sir, we have.

Q. Do they co-operate with you and give you what you ask? A. Yes, sir, always seem to wish to give me everything I ask, if they can supply it.

Q. When you had the Wilkins Theatre, were you able to

1 advertise a program in advance? A. No, sir. Never able to advertise anything until after we got our pictures.

Q. Did you get your pictures before the day of exhibition? A. No, sir. Our hour for opening up was two o'clock, and on some days we didn't get our pictures until three or four o'clock in the afternoon.

Q. Have you observed the character of the product of the licensed producers of motion pictures within the past two years, as to whether it has improved or deteriorated? A. I think it has improved wonderfully.

2 Q. What competition do you have in Wilkinsburg? A. We have two moving picture houses and one vaudeville house that shows moving pictures.

Q. What are the other two moving picture houses, licensed or unlicensed? A. One of them is licensed and the other is unlicensed.

Q. Does the vaudeville house show the licensed or the unlicensed pictures as special acts? A. It shows the unlicensed pictures.

Q. What is the seating capacity of the unlicensed house in Wilkinsburg? A. I expect it is about three hundred.

3 Q. What is the seating capacity of the vaudeville house, which shows the unlicensed pictures in its acts? A. That I could not say, but about twelve hundred or fourteen hundred. I have only been in it once.

Q. Does your theatre, or does the Doris Theatre, have any difficulty in keeping its program clear from the other house which is showing licensed pictures? A. We have not, no, sir.

Q. Do they both take service from the General Film Company? A. Yes, sir, I take from the Columbia branch, and the Colonial takes from the Duquesne, or rather the Calcium.

4 Q. Do you know whether or not the Colonial Theatre shows independent pictures in its program? A. I could not say positively, but I was told they did.

Q. Do you show any independent pictures in your program? A. I have not, no, sir.

Q. What is the price of admission to your house? A. Five cents.

Q. What is the price of admission to the other licensed house? A. Ordinarily five cents, and ten cents, on special features it charges ten cents.

Q. What is the price of admission of the unlicensed house? A. Five cents. 1

Q. What is the name of the unlicensed theatre in Wilkinsburg? A. The Grand.

Q. When you were interested in the Wilkins Theatre did you have any difficulty in keeping your program clear? A. Yes, sir, I did.

Q. Will you tell us something about that? A. Quite often I would have the same picture on that they would have at the Colonial, but they would change the picture for us.

Q. Did you have any difficulty at that time in obtaining from the exchange what they had promised you? A. Yes, we had. 2

Q. Did you always get it? A. We never got exactly what we were promised. We very seldom knew what we were going to have when we would go in there of a morning.

Q. What service do you use, and by that I mean what program? A. I use three reels.

Q. Every day, or every other day? A. Every day.

Q. Is the three-reel service the regular program in this vicinity? A. Yes, sir, the three-reel service.

Q. Is your theatre solicited by the independents from time to time? A. Only when their special features come out, not by any film exchange. 3

Q. Have the prices of motion picture service been increased to your theatre by the General Film Company? A. Well, in the way of the run it has, the run of the films.

Q. How do you mean "in the way of the run?" A. Well, in the date of the release. Our run today is not as new as it was a few years ago for the same money.

Q. What is the difference? A. Well, about, I suppose, fifteen days.

Q. Is the price that the Doris Theatre pays now larger or smaller than the price paid by the Wilkins Theatre? A. The same price, as I understand it. 4

Q. Did the Wilkins Theatre have a three-reel program? A. Yes, sir.

Q. Or a three-reel service? A. Yes, sir, three reels.

Q. What kind of projecting machine have you been using? A. I have been using an Edison.

Q. Have you been using an Edison altogether? A. Yes, sir.

1 Cross examination by Mr. GROSVENOR:

Q. Mr. Hunter, you have just one theatre, as I understand you, at the present? A. Yes, sir.

Q. And that is the Doris at Wilkinsburg? A. Yes, sir.

Q. And when you opened you started with independent pictures? A. Yes, sir.

Q. Which you exhibited for about five months? A. Yes, sir.

Q. And then you began to exhibit the licensed pictures which you have shown ever since? A. Yes, sir.

2 Q. Why did you change from one to the other? A. The film exchange that I was getting of, was sold out to my competitors, and I was told by the party that sold out that they were going to shut my service off, and he advised me to take the matter up with Mr. Willis, of Cleveland, Ohio, who he thought was the district manager of the General Film Company, and I wrote to Mr. Willis, of Cleveland, Ohio, and asked him where I could see him, or when he would be in Pittsburgh, and he wrote back and said he could not say, but if I would write him what I was wanting he would try and take the matter up, and in the meantime a friend of mine, who was running Association pictures, spoke to Mr. Nichols about it, and Mr. Nichols told him to have me come and see him, and I went in on the 25th of February—

3 Q. Of what year? A. Of 1912, to see him, and I made arrangements to get pictures of him.

Q. You had not been cut off at that time by the independents? A. No, I had not been cut off.

Q. Do you find that the licensed pictures are more profitable to show in your theatre? A. Yes, sir, my trade commenced to pick up as soon as I put on the licensed pictures.

4 Q. And that is the reason you have kept them? A. Yes, sir.

Q. You feel it is necessary to have them in order to run your theatre prosperously and profitably? A. I do, yes, sir.

Q. How many theatres are there in Wilkinsburg? A. There are three moving picture theatres, and one vaudeville house.

Thereupon, C. R. JONES, the next witness called by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. Pittsburgh, Pa.

Q. What business are you engaged in? A. Moving picture business, exhibiting.

Q. Do you own a theatre? A. Well, I own a lease.

Q. What theatre are you operating under a lease? A. The Novelty Theatre.

Q. Where is that located? A. On Federal Street, North Side.

Q. What is its seating capacity? A. Five hundred.

Q. How long have you had it? A. About three years.

Q. Before that, were you connected with any theatres? A. Yes, sir.

Q. What were they? A. I was connected, first, with a theatre in Wilkes-Barre, and then, one in Scranton, and then I had a third one on Smithfield Street, and two on Fifth Avenue.

Q. You mean, one on Smithfield Street, and two on Fifth Avenue, in Pittsburgh? A. Yes, sir.

Q. What were the names of the ones on Fifth Avenue? A. One was called the Hippodrome, and one the Idle Hour.

Q. What were the seating capacities of the Hippodrome, and the Idle Hour? A. Of the Hippodrome 425 and the Idle Hour, 210.

Q. How long have you been in the motion picture business altogether, in Pittsburgh? A. About seven or eight years.

Q. From what rental exchange were you taking service before the formation of the General Film Company? A. Why I was taking from the Pittsburgh Calcium Light for one of my theatres, and I was taking from a man by the name of Swaab, in Philadelphia, for another.

Q. What theatre were you taking service for from Mr. Swaab? A. The Greenland Theatre in Scranton.

Q. Did you have more than one theatre in the vicinity of Scranton? A. Not at that time.

Q. Did you supply a circuit in Scranton? A. Yes, sir, I had had a circuit there of four or five houses.

1 Q. At what time was that you had that circuit? A. That was at the time the General Film Company was formed.

Q. You mean the Patents Company? A. Yes, sir.

Q. Did you have this circuit of four or five theatres in the vicinity of Scranton after the Patents Company was formed? A. Yes, sir.

Q. And during that period, you were receiving service from Mr. Swaab, of Philadelphia? A. Yes, sir.

2 Q. In what way did he ship the service? A. Thirty-five reels a week.

Q. Did he ship them all together? A. Yes, sir.

Q. And you held them in stock in your theatre? A. Yes, sir.

Q. Or in your place of business? A. Yes, sir.

3 Q. When you were taking service from the Pittsburgh Calcium Light Company, and also when you were taking service for Scranton, and in its vicinity, from L. M. Swaab of Philadelphia, were you able to advertise a definite fixed program in advance, and to exhibit it on the date designated in the advertisement? A. Why, in those days the only advertisement we ever got out was a square piece of cardboard—that was before the day of the poster—generally 22 by 28 inches, and all it had on it was the name of the film.

Q. Were you able to select a program in advance? A. No, sir, we would take what we got.

Q. Would they give you a definite program? A. No, sir, we would just take what we got.

Q. Would they make you promises regarding what they would deliver to you? A. No, sir; no promises made.

4 Q. After you took service from the General Film Company were you able to fix upon a program, and to announce it in advance? A. Yes, sir.

Q. And were you able to advertise it, and to show the program on the date designated? A. Yes, sir, weeks in advance we could get it.

Q. How long have you been doing this? A. Ever since the General Film Company was organized or existed.

Q. Were you able to do this when you took service from the Pittsburgh Calcium Light Company, prior to the coming of the General Film Company into this field? A. No, sir.

Q. Did you answer "No?" A. I answered "No, sir."

1

Q. What service do you use in your theatre? A. The General Film Company's.

Q. By that I mean what is the character of the service?

A. By that do you mean the age or character?

Q. I mean the program, as well as the age. A. We usually get a comedy, and may be a Western.

Q. Is it a three reel, or a four reel program? A. Five reels.

Q. A five reel program? A. Yes, sir.

Q. Is that an every other day program, or every day?

A. Every day.

2

Q. What is the age of it? A. From ten days, to forty days.

Q. And what service were you taking from the Pittsburgh Calcium Light Company? A. In those days we were only running two reels each day, but I can't recollect how old they were.

Q. Considering the quality of the service, and the number of reels it contains, has the price of the service been increased? A. Not considering the increased number of reels we are using.

3

Q. What did you pay for the two-reel service you took from the Pittsburgh Calcium Light Company? A. Forty-eight dollars a week.

Q. And what do you pay for the five-reel service you are taking from the General Film Company? A. Seventy dollars.

Q. Have you ever had a lower price than that from the General Film Company for a five-reel service at the same age? A. Not for five reels.

Q. Have you ever used the independent service? A. Yes, sir.

4

Q. Where did you use it? A. In a house I had opposite the one I now run, which I sold a few months ago.

Q. How long did you have this house? A. About two and a half years.

Q. What was the name of it? A. The Federal Theatre.

Q. What was the seating capacity of the Federal Theatre? A. About two hundred and twenty.

Q. That is situated on Fifth Avenue? A. On Federal Street.

Q. On Federal Street? A. Yes, sir.

1 Q. Did you run the independent service in the Federal Theatre during the two and a half years you owned it?
A. Yes, sir.

Q. Did you start the Federal Theatre? A. Yes, sir.

Q. And you started it with the independent films? A. Yes, sir.

Q. Did you ever show licensed films in it? A. Not until recently, within the last six months.

Q. Did you increase your business right along in the Federal Theatre during the period that you showed the unlicensed film? A. No, sir; I didn't increase it.

2 Q. Did it do a good business? A. Yes, sir.

Q. From what independent source did you obtain your independent film up to within the last six months? A. I obtained it from the Pittsburgh Photo-Play Company.

Q. And then from whom did you get it? A. The Weiland Feature Film Company.

Q. What percentage of the program that you exhibit is dramatic? A. Well, I should say about seventy-five per cent.

3 Q. And what percentage is comedy? A. Well, I think the balance is between comedy and western pictures.

Q. Is there a theatre taking service in your immediate neighborhood from the General Film Company? A. Yes, sir.

Q. How many blocks away is it? A. In the next block.

Q. Do you have any trouble in keeping your program clear from the theatre in the next block? A. No, sir.

Q. What is the name of the theatre in the next block? A. The Casino.

Q. Do you know the seating capacity of it, approximately? A. Probably two hundred and fifty.

4 Q. Do you ever make a request on the General Film Company for a special subject? A. Yes, sir.

Q. Do they co-operate with you and endeavor to give you the variety that you order? A. Yes, sir.

Q. Do you advertise from week to week your pictures in advance? A. Yes, sir, we get a program out every week.

Q. Do you circulate the program in the neighborhood? A. Yes, sir.

Q. Have you observed the character and quality and artistic excellence of the pictures furnished by the licensed producers of motion pictures? A. Yes, sir.

Q. Have you any opinion as to whether the service has improved in these respects? A. I think the service has improved right along. 1

Q. In dealing with the unlicensed exchanges do you have any difficulty in getting a fixed program in advance? A. With the Photo-Play I have not, but with the Weiland Film Company I have had a great deal of trouble.

Q. Did you have them straighten it out, and see that you got the program? A. No, sir, it was impossible to straighten it out, but I did the best I could.

Q. Did this fact have something to do with your leaving the independent service? A. No. When the Weiland Feature Film Company took the field they promised to give us a feature every day, and they gave us our advertising free with it, and that was the inducement to get us to take service from them, but they could not live up to their agreement. 2

Q. Did you have any difficulty in changing to the licensed service when you wished? A. I have been taking the licensed service since they began, and I didn't have to change.

Q. I mean in your unlicensed house? A. They let me run the licensed films in the unlicensed house. 3

Q. Did you run the unlicensed film in your house in connection with the licensed service? A. Yes, sir, ran it for the last six months.

Q. How long had you done it previous to that time, if at all? A. Not until within the last six months.

Q. You mean not until within the last six months? A. Yes, sir.

Q. What kind of projecting machine have you been using? A. A Simplex and a Powers No. 6.

Q. Have you used this kind right along since you have been in the business? A. Always used a Powers No. 6 until a year ago, when I put in a Simplex. 4

Cross examination by Mr. GROSVENOR:

Q. Mr. Jones, you have only one theatre today? A. Yes, sir.

Q. You have always shown only licensed pictures in that theatre? A. Yes, sir.

1 Q. How long have you had this theatre? A. About three years.

Q. And you sold a while ago the only theatre which you had in which you were showing the other pictures, the independent pictures? A. Yes, sir.

Q. Which is the larger of those two theatres, the one which you have retained, or the other one? A. The one I have retained.

Q. And that is the more profitable? A. Yes, sir.

2 Q. You feel that it is necessary, in order to have a profitable theatre, to show the licensed pictures in your house? A. Well, I never looked at it in that light. I have just been using them right along. I had no object in changing them.

Q. Are features an important part of the program? A. They are getting to be that.

3 Thereupon, JOHN PENMAN, Jr., the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed:

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. Charleroi, Pa.

Q. How long have you lived there? A. Three years.

Q. Do you own a theatre there? A. I lease a building there.

Q. Do you own the amusement that is carried on in that theatre? A. Yes, sir.

Q. What is the name of that theatre? A. Lyric Theatre.

4 Q. What is its seating capacity? A. Two hundred and fifty-six.

Q. Is the Lyric Theatre a motion picture theatre? A. Yes, sir.

Q. Prior to operating the Lyric Theatre, were you engaged in the motion picture business anywhere else? A. Yes, sir.

Q. And where? A. Coile Theatre at Charleroi, the Lyric Theatre in Duquesne, the Grand Theatre in Duquesne, and another theatre in Duquesne.

Q. What is the seating capacity of the Coile Theatre?
A. Seven hundred. 1

Q. What is the seating capacity of the Lyric, in Duquesne? A. Two hundred.

Q. And of the Grand? A. Two hundred.

Q. Over how long a period does this experience extend?
A. Seven years.

Q. Were those all licensed theatres? A. Yes, sir.

Q. Is the Lyric Theatre a licensed theatre? A. Yes, sir.

Q. Are you interested at this moment in any other theatre except the Lyric Theatre? A. No, sir.

Q. In 1908 and 1909, from what exchange or exchanges were you obtaining motion pictures? A. The Pittsburgh Calcium Light & Film Company. 2

Q. At that time did you find it possible to advertise a fixed and definite program in advance, and to exhibit the program on the date designated in your advertising? A. On very rare occasions I got the picture. We advertised very seldom.

Q. What was your experience in respect to that? A. Mr. Rowland would always tell us he was not sure whether the films were in or not, and that if we advertised them in advance, we did so at our own risk. 3

Q. Mr. Rowland was one of the owners of the Pittsburgh Calcium Light Company? A. Yes, sir.

Q. Did you talk with him, personally? A. Yes, sir.

Q. When you were arranging a program? A. Yes, sir; when I arranged anything special.

Q. Did you ever have the experience of advertising a program in advance, and then not being able to exhibit it at the time indicated? A. No, sir; not that I remember of.

Q. You didn't advertise much, then? A. No, sir.

Q. Have you been, at any time in your experience as a motion picture exhibitor, able to advertise a fixed, definite program in advance, and then to exhibit it on the date set out in your advertisement? A. That is every week? 4

Q. Yes. A. No, sir.

Q. What are you doing, now, in that respect? A. I have a weekly program that I put out every Saturday night.

Q. For the week in advance? A. Yes, sir.

Q. And are you able to exhibit that program? A. Yes, sir.

1 Q. You have not been disappointed in respect to exhibiting it? A. No, sir.

Q. How do you advertise? A. I have a weekly program that consists of six pages, and each day's pictures are on one page.

Q. So that the pictures for the following week are in the program which you circulate on Saturday of the present week? A. Yes, sir.

Q. The program which you circulate on Saturday of the present week? A. Yes, sir.

2 Q. Have you been able to do this since you have been taking service from the General Film Company? A. Yes, sir.

Q. Did you remain with the Pittsburgh Calcium Light Company until its stock and supplies were purchased by the General Film Company? A. I never got films from anyone else, with the exception of one week.

Q. How many theatres have you in Charleroi? A. Four theatres.

Q. What are they? A. The Coile Theatre—

3 Q. I mean, do they show the licensed or the unlicensed films? A. One licensed house and three independent houses.

Q. The Lyric Theatre is your theatre, and that is a licensed theatre? A. Yes, sir.

Q. What are the names and seating capacity of the three unlicensed houses? A. Coile Theatre seats something over 500 there; Star Theatre, about 290, and the Palace Theatre, three hundred and fifty.

Q. Do you know what motion pictures they are using? A. The Coile Theatre is using the Universal program, and the Star Theatre uses the Mutual program.

4 Q. Do you know what the other one is using? A. And the Palace Theatre uses Weiland Feature Film Service.

Q. Is the Weiland Feature Film Service a complete program? A. He only runs pictures three days a week. He runs vaudeville three days, and I don't know what else.

Q. Do you run a continuous program every day in the week? A. Yes, sir.

Q. What is your program? What is the number of reels? A. If we run a five-cent show, it is three reels; and a ten-cent show, five reels.

Q. Do you have more than one day a week when you

have a ten-cent show? A. Three to four days, a ten-cent show. 1

Q. Do you ever have any difficulty in keeping your program clear? A. No, sir.

Q. The other theatres being independent, of course you have no difficulty in that respect? A. No trouble at all since the General Film Company was organized.

Q. Did you have any difficulty in that respect before these independent theatres were established, or began to use the independent service exclusively? A. About three years ago, I think.

Q. From whom were you taking service then? A. The Pittsburgh Calcium Light & Film Company. 2

Q. What was your experience at that time? A. My opposition and I used to get the same pictures on the same day.

Q. Did you make any complaints to the Pittsburgh Calcium Light Company? A. No, sir.

Q. Did you do anything to clear the programs? A. No, sir.

Q. How long did this situation last? A. Up until the time the General Film Company bought up the Pittsburgh Calcium Light Company. 3

Q. Was it then arranged so that you no longer had a conflicting program? A. Yes, sir.

Q. What has been your experience with respect to prices? Are you paying as much or less or more now than you did before the General Film Company came into this field? A. Just about the same.

Q. Has your service been changed any? A. It dropped back 16 days.

Q. Is that a satisfactory service in a town where your competitors are all independent? A. Yes, sir.

Q. How do you advertise? A. Newspaper. Daily newspaper. 4

Q. Do you use billboards and circulars? A. Yes, sir.

Q. Do you run special features from time to time? A. Yes, sir.

Q. Do you ever run independent special features? A. I have not run any for the last six months.

Q. Did you, prior to that time? A. Yes, sir.

Q. Did you run them in connection with the licensed service? A. Yes, sir.

1 Q. How often did you do it? A. I averaged about once a week.

Q. How long had you been doing that, up to six months ago? A. About six months, I suppose.

Q. Have you observed whether or not the character and quality and artistic excellence of the licensed motion pictures have improved or deteriorated in the past two or three years? A. They have improved.

Q. Is that your judgment of the situation? A. Yes, sir.

2 Q. Did you ever have any difficulty in getting licensed service? A. No, sir.

Q. Are you solicited by the independents from time to time? A. Yes, sir; from the feature exchanges once in a while, they come around. Not very often.

Q. What kind of projecting machines do you use? A. Powers, No. 5.

Q. Have you used that kind since you have been in business? A. Yes, since I have been in the business.

MR. GROSVENOR: No cross examination.

3 Whereupon, at 4:00 o'clock P. M., on this January 5th, 1914, the hearings were adjourned until 11 o'clock A. M., January 6th, 1914, to be resumed at Hotel Statler, Cleveland, Ohio.

1

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

<p style="text-align: center;">UNITED STATES OF AMERICA, Petitioner,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">MOTION PICTURE PATENTS CO. and others, Defendants.</p>	}	<p style="text-align: center;">No. 889.</p> <p style="text-align: center;">Sept. Sess., 1912.</p>
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2

CLEVELAND, OHIO, January 6, 1914.

The hearings were resumed, pursuant to adjournment, at 11 o'clock A. M., January 6, 1914, at the Statler Hotel, Cleveland, Ohio.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

3

Present also, JOSEPH R. DARLING, Esq., Special Agent.

CHARLES F. KINGSLEY, Esq., appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

4

- 1 ORA L. BRALEY, a witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposes as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Braley? A. At Toledo, Ohio.

Q. How long have you lived in Toledo? A. About six years.

Q. What is your business? A. I am in the motion picture exhibition business.

- 2 Q. How long have you been in the motion picture exhibition business? A. Since April 18th, six years ago. I guess, 1908.

Q. What theatre or theatres are you operating at the present time? A. Princess Theatre, 316 St. Clair Street—

Q. What is the seating capacity of that? A. Eight hundred and seventy-two.

Q. What other theatre are you operating? A. Royal Theatre, at 425 Summit Street.

Q. The seating capacity of that is how much? A. Two hundred and ninety-nine, I believe. Something between that

- 3 and three hundred and ten.
- Q. Are you operating any other theatre? A. I have a three-quarter interest in the Colonial Theatre.

Q. And what is the seating capacity of the Colonial? A. Eight hundred and fifty.

Q. How long have you operated the theatres to which you have referred? A. The Princess Theatre was originally located on Summit Street, at 239 Summit Street, and after being there five years, I moved it to St. Clair Street. The Royal Theatre I have operated for about four years and a half. The Colonial Theatre I purchased a three-quarter interest in on the 20th day of October, 1913.

- 4 Q. What service are you using in your three theatres at the present time? A. I am using the licensed service.

Q. Have you used the licensed service altogether in these theatres? A. Well, almost entirely. When I purchased the Colonial Theatre on the 20th of October, they were using an independent service, but I discontinued the use of that within ten days after I bought the controlling interest in it.

Q. From what rental exchange have you been securing

your supply of licensed motion pictures? A. For the last several years, from the General Film Company at Detroit. 1

Q. Before you began to secure your motion pictures from the General Film Company at Detroit, from what rental exchange or rental exchanges did you secure your supply of motion pictures? A. When I first opened the Princess Theatre six years ago, I secured the service from the Superior Film Supply Company of Toledo, and then, later—well, I have forgotten the name of the exchange. It was the Vaudette—The National Vaudette, of Detroit.

Q. And were you still taking service from the National Vaudette Film Exchange at Detroit at the time it sold its property to the General Film Company? A. Yes. At that time—and I was also taking service at that time from the Kent Film Exchange at Toledo. I had two theatres at that time. 2

Q. Prior to the arrival of the General Film Company in this field, did you find it possible to advertise a program for your theatres in advance? A. I never knew what I was to have until the films were delivered to me on the day they were to be exhibited.

Q. Did you have any experience before the General Film Company began business in this territory, of advertising or attempting to advertise a program, and not being able to show it at the time designated in your advertisement? A. No, I cannot say that I did, because I never advertised anything that I did not know I was going to get, positively. 3

Q. You knew, at that time, you could not advertise with certainty? A. Yes, sir.

Q. After the General Film Company began doing business in this field, did you find it possible to announce a program in advance, and to advertise it? A. Yes, sir; always. A week in advance. 4

Q. And have you been doing that since the General Film Company began serving your theatres? A. Yes, sir.

Q. Mr. Braley, do you have any competitor in the immediate vicinity of any of your theatres, who is using the licensed service? A. None.

Q. Do you have any competitors in the immediate vicinity of your theatres who are using unlicensed service? A. Yes, sir.

Q. What theatres are using unlicensed service in competition with your theatres? A. The Alhambra.

1 Q. Will you tell us the seating capacity of these theatres so far as you know them, at the time that you answer? A. So far as I know, yes, sir. The Alhambra has a seating capacity of about 760; the Hippodrome, about 550. The Crown, 320. The Heart Theatre, about 350.

Q. Have these theatres been using the unlicensed service for some time? A. Yes, sir.

2 Q. For how long a period, would you say? A. The Alhambra was completed on Decoration Day, and opened with unlicensed service. Decoration Day, 1913. Opened with the independent service, and have been using it ever since. The Hippodrome opened on Labor Day, 1913, and has been using independent service.

Q. The Crown? A. The Crown Theatre has been using independent service with the exception of a short time, when they used licensed service.

Q. Are they using unlicensed service now again? A. Using unlicensed service now, yes, sir.

3 Q. And the Heart Theatre? A. Has been using both licensed and independent at different times. I neglected to also state the Empress Theatre, with a seating capacity of 370, using independent service.

Q. How long has that been using independent service, if you know? A. Well, they have used both licensed and independent, but mostly independent. Probably for the last eighteen months, independent entirely.

Q. Do you know how the theatres are divided in Toledo with respect to unlicensed and licensed service? A. I should say that about eighteen to twenty were using licensed service, and twenty-five to twenty-seven were using independent service.

4 Q. Do you know how they are divided as to size, with reference to licensed and unlicensed service? A. About equal, I think.

Q. Are some of the large theatres using unlicensed service? A. Yes, sir.

Q. Mr. Braley, have you had any experience at any time in competition with a theatre which was owned either in whole or in part by the owner of a rental exchange? A. I have not; no sir.

Q. Are you interested in any theatre which is using unlicensed service? A. Not at present; no, sir.

Q. Have you had any difficulty in keeping your programs clear since you have been taking service from the General Film Company, or has the situation been such that there was no trouble on that score, because your immediate competitors were running unlicensed service? A. Since I have been taking service from the General Film Company, I have had no trouble in keeping my programs clear. 1

Q. How is that accomplished? A. From the fact that the booking of the licensed theatres is under one head.

Q. From the fact that the licensed theatres which compete with you receive their service from the same source, and the booking clerk arranges it for you? A. Yes, sir. 2

Q. Do you select your own programs, or do you permit the exchange to fix it for you? A. They fix the programs. We make requests in advance, lots of times.

Q. Do you ever make requests in advance for service, special service? A. Yes, sir.

Q. Of the reels which you desire to have in your programs? A. Yes, sir.

Q. And do you get them? A. Yes, sir; almost invariably.

Q. What was your experience before the General Film Company entered this field, with respect to keeping your programs clear, and getting the sort of show that you wanted? A. It was impossible. 3

Q. What was your experience? Could you give us some details of it? A. At the time when the Kent Film Exchange and the National Vaudeville were both furnishing me with service, the Kent Film Exchange was also furnishing the Empress Theatre with service. The Empress Theatre was almost directly across the street from me, from my Royal Theatre, and the Royal Theatre and the Empress Theatre were running the same programs every day, to the detriment of both, but both wanted the service, and we both hung on. 4

Q. And there was constant conflict? A. Yes, sir; yes, sir.

Q. And did this extend over some period? A. It was a matter of about three or four months, I think.

Q. Are you related to anyone who is operating a theatre in Toledo? A. Yes, sir.

Q. Who is it? A. My father operates the Crown Theatre.

Q. And the Crown Theatre, I think you said, was an unlicensed theatre? A. Yes, sir; unlicensed.

Q. And exhibits an unlicensed program? A. Yes, sir.

1 Q. Do you use any unlicensed film in your theatre at the present time? A. None at all.

Q. During the period that you have been operating motion picture houses, have you been familiar with the price of service? A. Yes, sir.

Q. How does the price today compare with the prices that you were paying in 1908 and 1909? A. I am paying more money at the present time, but I am getting more new reels.

2 Q. Considering the fact that you are getting more new reels, how does the price compare with the prices in 1908 and 1909? A. I consider the prices today as less than it was four or five years ago.

Q. What service were you using in 1908 and 1909? A. I was using the—

Q. By that I mean, what kind of a service, what sort of a program? A. I was getting eight first-runs a week, and six second-runs, as they were called. They had been previously shown in that vicinity.

3 Q. And what were you paying for those? A. I was paying—from the Kent Film Exchange, I was paying \$110.00 a week, and from the National Vaudeville, I was paying \$100.00.

Q. What service are you exhibiting now, and what are you paying? A. At the Princess Theatre, I am using—let me see—sixteen first-runs, and five second-runs. Twenty-one reels a week.

4 Q. And the price? A. \$180.00 a week. The charge on that service is only \$140.00 a week for two houses, and I take some of the service away from another house, and put it in this house, and make that entry on my own books, but, really, the bills come in at \$140.00. But on my Royal Theatre, the bills come in at \$140.00, and I make the charge at \$100.00, because of the fact that I take some of that service from the Royal Theatre.

Q. What is the total aggregate price that you pay for the service for the three houses, net? A. \$440.00

Q. \$440.00? A. Yes.

Q. And that comprises how many reels, altogether? A. It comprises 77 reels.

Q. How many of those are first-runs? A. 49.

Q. Now, going back to 1908 and 1909, you did not have three theatres, did you? A. No, sir.

Q. How many did you have then? A. Two.

Q. Now, tell us what the total number of reels was that you had then, and give us the first-runs, and also the total aggregate price, if you can? A. I was getting, at that time, 35 reels, of which 16 were first-runs, and paying \$220.00 a week.

Q. So that the price, in reality, considering the aggregate service that you now have, in comparison to the aggregate service that you had in 1908 and 1909, is no larger? A. No, it is not.

Q. What projecting machines do you use in your theatres? A. I have five Edisons, and two Simplexes.

Q. What is the name of the theatre in which you recently purchased a controlling interest? A. Colonial Theatre.

Q. Did you say that the Colonial Theatre was using an unlicensed service at the time you purchased it? A. Yes, sir.

Q. Did you subsequently change it to a licensed service? A. Yes, sir.

Q. Have the receipts of the Colonial Theatre increased since you changed from an independent service? A. They have not.

Cross examination by Mr. GROSVENOR:

Q. Mr. Braley, you obtain your films from Detroit? A. Yes, sir.

Q. And they are shipped from that city every day to your place of business in Toledo, Ohio? A. Yes, sir.

Q. And every day you return the films which you are through with, to Detroit? A. Yes, sir. I might add that we get some of our films from Cleveland here, at the present time.

Q. But most of your business is done with Detroit? A. Yes, sir.

Q. You say you are using five Edison machines? A. Yes, sir.

Q. Were some of those purchased prior to the formation of the Patents Company? A. I think not. I could not say positively.

Q. Did you own a theatre when the Patents Company was organized? A. Yes, sir.

Q. What machine were you using in it? A. Edison.

Q. And from whom had you purchased that Edison ma-

1 chine? A. I would not say positively, but, I believe, from the Superior Film Supply Company.

Q. It had been purchased outright? A. Yes, sir.

Q. After the Patents Company was formed, did your theatre pay \$2.00 a week royalty, for using the licensed service? A. Yes, sir.

Q. Have you ever tried to show independent pictures, that is, a regular independent service, in your theatres, the Princess or the Royal? A. No, sir; I never have.

2 Q. Why not? A. I have always preferred the licensed service. I have always preferred the pictures of the licensed service.

Q. You said that you and another theatre had some trouble before the General Film Company was organized, by reason of conflicting programs? A. Yes, sir.

Q. Did that trouble continue up to the formation of the General Film Company? A. No. They went and took independent service before that time.

Q. Before the General Film Company was organized? A. No. They were taking the licensed service at the time the General Film Company was organized.

3 Q. But the trouble that you had had over conflicting service had ceased some time before the General Film Company was organized? A. No, sir. It ceased at that time.

Q. Then, what became of this other theatre with which you were having trouble? A. They continued with the General Film Company for some time. A matter of several months. And then they took unlicensed service, the independent service.

4 Q. Which of the theatres using licensed service in Toledo are nearest to the Princess and the Royal? A. There are no theatres using licensed service that are near the Princess and the Royal. The Princess and the Royal are using the licensed service—and the Colonial—they are the only downtown theatres that are.

Q. How far do you have to go from the Princess Theatre and the Royal, to find a licensed theatre? A. Ten blocks.

Q. How far is the Alhambra from the Princess and the Royal? A. It is a block and a half from the Princess, and about two blocks from the Royal.

Q. How far is the Hippodrome? A. The Hippodrome is probably—oh, 50 feet further away.

Thereupon, ROBERT G. PELTIER, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed: 1

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Peltier? A. Mount Clemens, Michigan.

Q. How long have you lived there, Mr. Peltier? A. All of my life.

Q. In what business are you engaged? A. The theatrical business. 2

Q. Are you operating any theatres in Mount Clemens? A. Yes, sir.

Q. What theatre? A. The Bijou.

Q. How long have you operated the Bijou? A. You want me to indicate? Well, I have operated the Bijou for six years, but I have had different theatres.

Q. Please tell us what theatres you are operating, or have operated, giving the seating capacity and location of each? A. Six years ago I opened the Little Bijou, seating ninety people. The following year I enlarged it to a seating capacity of 125. I continued that for another year, and then added another theatre seating 150, and conducted the two for six months. Then, the following year I moved to another location, to one seating 220. The same year I gave that one up and built a new one, seating 425. 3

Q. What was the name of the one seating 220? A. Two hundred and twenty? They were all of the same name, except the second one was the Majestic. I always kept the same name, the Bijou.

Q. But changed the location and size? A. Yes, sir.

Q. From time to time? A. Yes, sir. 4

Q. The Bijou Theatre seats now, 425? A. I still have another one. The last theatre I built, the present theatre, seating 971.

Q. And that is called the "Bijou?" A. Yes, sir.

Q. Mr. Peltier, is your theatre a motion picture house? A. Well, I don't know what you would call it. I run both attractions, motion pictures and features, or also features, and a little touch of vaudeville.

Q. Mostly motion pictures? A. Yes, sir.

1 Q. How many motion picture theatres are there in Mount Clemens? A. Two in operation at present, and there is still another one there, but not operating now.

Q. Do you use the licensed or unlicensed pictures? A. The licensed.

Q. What is the name of your competitor, or what is the name of his theatre? A. The Lyceum.

Q. What is the seating capacity of the Lyceum? A. About 240.

Q. And that uses, I think you stated, the unlicensed service? A. Yes.

2 Q. Mr. Peltier, have you always used the licensed service in the Bijou Theatre? A. Yes, sir.

Q. From what rental exchange were you obtaining motion pictures in 1908 and 1909? A. The National Film Company, of Detroit.

Q. Did you continue with the National Film Company until it sold its property to the General Film Company? A. Yes, sir.

Q. Have you since continued to take your service from the General Film Company? A. Yes, sir.

3 Q. Before the General Film Company began to do business in your field, did you find it possible to advertise a program in advance? A. I did not.

Q. What was your experience at that time, with respect to keeping your program clear from your competitors? A. Well, there was comparatively no trouble, from the fact that I had no opposition, except for a short time I had a little opposition.

Q. While you had this opposition, did you have any difficulty, then, in keeping your program clear? A. Very little.

4 Q. From what source was this opposition house securing its service? A. For a while, from the Superior people of Toledo, and also the Vaudette Exchange, of Grand Rapids.

Q. How long did that opposition continue? A. Oh, I should judge, a couple of months.

Q. After the General Film Company began to serve you, did you find it possible to announce a program in advance, and to advertise it? A. A week, or two weeks, or three weeks, or four weeks, in advance.

Q. And you could produce the program on the date designated in your advertisement? A. Yes, sir.

Q. Have you since that time, advertised your programs?
A. Yes, sir. 1

Q. During the period that you have been interested in the motion picture theatre business in Mount Clemens, have you been familiar with the prices of motion picture service?

A. Yes, sir.

Q. Taking into consideration the number of reels you give, or the program that you show today, and the number of reels you gave, or the program that you exhibited in 1908 and 1909, what do you say as to whether the prices have increased or diminished? A. They have diminished considerably, I should think. 2

Q. What service were you renting in 1909, and by that I mean, what character of program were you furnishing?
A. In 1909?

Q. Yes. A. I think I was taking three reels four times a week, twelve reels a week.

Q. What did you pay for that service? A. Forty-five dollars.

Q. What service are you using today? A. I am using twenty-eight reels.

Q. A week? A. Yes, sir. 3

Q. What are you paying for them? A. Fifty-five dollars.

Q. What kind of projecting machine do you use, Mr. Peltier? A. A Powers.

Q. Have you always used a Powers? A. Yes, always.

Q. Do you know the model? A. Yes, sir; a No. 6A, the latest model.

Q. What do you say as to whether the character, quality, and artistic excellence of motion pictures have improved or fallen off in the past few years? A. They have improved wonderfully, in my opinion.

Q. Do you find that the manufacturers are competing among themselves with respect to the character and quality of pictures? A. Yes, sir. 4

Q. Do they advertise their pictures? A. Yes, sir.

Q. Do you receive circulars and advertisements urging you to demand a certain kind or brand of pictures from your exchange? A. Yes, sir; plenty of literature.

Q. Are you solicited by the independents from time to time? A. Once in a while.

Q. Do they offer you any inducement in the way of price

- 1 of the service? A. The only inducement that I have ever been offered, they once wanted me to come over to them, and I said, "I know you have a first-class service, but there is another man in my town—"

MR. GROSVENOR: I object to this statement as hearsay, and as entirely irrelevant and immaterial, and not called for by the question addressed to the witness.

- 2 MR. KINGSLEY: He made the statement himself. It cannot be hearsay.

By Mr. KINGSLEY:

Q. You may answer? A. I told them that somebody was using their films in my town, and they said, "Well, we will take it away from him and give it to you," and I said, "I don't do business that way."

Q. Do you select your own program, or permit the exchange to select it for you? A. Well, a little of each.

- 3 Q. Do you frequently make requests of the exchange? A. Yes, sir.

Q. For certain pictures? A. Yes, sir.

Q. At certain times? A. Yes, sir.

Q. Do they give them to you? A. Yes, sir.

Q. Do you find that they co-operate with you in endeavoring to furnish you the sort of program that you desire? A. Yes, sir, in every sense of the word.

Cross examination by Mr. GROSVENOR:

- 4 Q. Mr. Peltier, you say that for a considerable period you had no opposition in Mount Clemens, and that, therefore, you had no trouble from conflicting programs? A. I have had no opposition in the same line of service. I had opposition, though.

Q. That is, before the General Film Company was organized there was not any trouble in conflicting programs? A. Yes, sir; there was a little at that one time I told you of.

Q. How long did that last? A. Not very long.

Q. And excepting for that one instance, you had no trouble in Mount Clemens from conflicting programs, did you? A. No; there was nobody using the same service.

Q. Then you could have, if you had wanted to, advertised what you were going to show at that time without danger of your competitor showing the same thing? A. Yes, sir; for that particular time I could, when there was nobody using the same service.

Q. But you didn't do it? A. Well, I could not do it.

Q. And why not? A. I didn't know what I was going to get.

Q. Were you getting any circulars from the different manufacturers, calling attention to what they were going to put out? A. That had nothing to do with it.

Q. Were you getting any circulars from the different manufacturers, calling attention to what they were going to put out? A. Yes, sir.

Q. And there was not anybody else using the same service as you in Mount Clemens? A. No, sir.

Q. Why couldn't you have selected some of the things that they told you they were going to put out, and have advertised them? A. I didn't do business with the manufacturers.

Q. Who did you do business with? A. The exchange man.

Q. Could you have selected and ordered through the exchange man, a title of a picture that the manufacturer told you he was going to put out? A. Yes, sir; once in a while, I could.

Q. Well, did you do it? A. I believe I did it on a few occasions.

Q. You were able to advertise the different outputs, or the different pictures of the different manufacturers, before the General Film Company was organized? A. Well, I could not, because very seldom it was I could do that.

Q. Didn't you take the trade papers? A. Yes, sir.

Q. Did the manufacturers state in the trade papers what their productions were going to be in advance of the coming out of their productions? A. Yes, sir.

Q. And there was nobody in opposition to you who was showing the same service in Mount Clemens? A. No, sir.

Q. And you were buying these things the manufacturers stated they were going to bring out, you were buying them from the exchange men? A. Renting them.

Q. There was not anything to prevent your advertising

1 in Mount Clemens, if you had seen fit to do so that on a certain day you were going to show such and such a picture?
 A. There was nothing to have prevented me, if I had the pictures.

Q. Didn't you get what you ordered, generally? A. No, sir; not always.

Q. Didn't you get it, generally? A. Well, no, I can't say exactly, generally.

Q. How often did you get it? A. It was only once in a great while that I would make the request of them to give
 2 me something, and possibly I would get it.

Q. You took the service that the exchange gave you then just as to-day you are taking the service which the General Film Company gives you? A. No, I don't take the service that the General Film Company gives me. I get a pretty good pick at it. If I am getting a certain maker's reels on Monday I will say: "Can I shift that to another maker's reels that I like better" and they state "Yes, go ahead" and maybe if they can't do it to-day, they will say "We can't do it to-day, but we will do it at the earliest convenience."

Q. Have you ever tried to show independent pictures?
 9 A. No, I have not, not since the organization I have—

Q. Not since the organization of the Motion Picture Patents Company? A. You mean if I have shown one particular picture or gone to that service, do you mean?

Q. Have you ever given up the licensed service? A. No, sir, I never have.

Re-examination by Mr. KINGSLEY:

Q. Mr. Peltier, will you tell us in your own way just why it was that before you began to take service from the General Film Company you could not advertise a program
 4 a week in advance with any certainty of being able to show that program on the date set out in your advertisement?
 A. Well, one particular one was there was no regulation of purchases there. They were not purchasing a stated amount of films all the time. One week they would purchase fifteen a week, and maybe another week twenty, and I might look up the trade paper advertising a certain film, and make a request for it, and would find they were not buying it, and for reasons like that, and at that time I didn't make any special efforts like I do now, to get programs any way, and

since they have paved the way as to what you may do, and say you can do that, you take an interest in it, and see the importance of it. 1

Q. Could you find out with any certainty before you got your show what you were going to have at that time? A. A certain reel once in a while.

Q. Was that about the limit of the certainty? A. Yes, sir, the only way I could find out was on the day I would take it, he would name ten or fifteen reels, and you would have to take from them.

Q. That was on the day you took it? A. Yes, sir.

Q. And now you know two or three weeks in advance? A. Yes, sir. 2

Q. What you are going to have? A. Yes, sir.

Q. And advertise it in advance? A. Yes, sir.

Q. And on the day set out in the advertisement you show that program to the people of Mount Clemens? A. Yes, sir.

Recross examination by Mr. GROSVENOR:

Q. Isn't it a fact that in those days, five or six years ago, or even four years ago, it never occurred to you to advertise? A. Well, no, only on special occasions it would. 3

Q. Has not the business developed a lot since you went into it? A. Yes, sir, wonderfully.

Q. When you first opened a motion picture theatre you never thought of putting an advertisement out as to what you were going to show in advance? A. No, sir.

Q. The business had not developed to that extent? A. No, sir.

Q. Isn't it a fact that this matter of advertisement in advance is more a development in later years? A. It has developed greatly, yes, sure. 4

Re-examination by Mr. KINGSLEY:

Q. It developed more rapidly after the General Film Company began to serve you did it not? A. It came right to a head then.

Q. What you did ten years ago is not any criterion as to what you might have done four years ago? A. No, sir.

1 Thereupon SAMUEL E. MORRIS, the next witness produced by defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. Cleveland, Ohio.

Q. In what business are you engaged? A. Motion picture exhibiting business.

Q. Do you own or operate a theatre here? A. I do.

2 Q. Do you own or operate more than one? A. Not directly. I am interested in another.

Q. Are you connected with the management of the other one? A. No, sir.

Q. What theatre do you operate? A. The Home Theatre.

Q. Where is that located? A. One hundred and fifth and Superior.

Q. How large a theatre is it? A. Six hundred seats.

Q. How long have you had it? A. Over four years.

Q. Were you in the motion picture business before you took the Home Theatre? A. Yes, sir.

3 Q. Where were you located then? A. Pittsburgh.

Q. What theatre did you operate in Pittsburgh? A. The Bronx.

Q. What service have you been using for the past four years in the Home Theatre? A. The General Film, that is the licensed service.

Q. During all that time were you taking your service from the General Film Company, or part of the time from the General Film Company and some other exchange? A. The Lake Shore.

4 Q. Were you taking your service from the Lake Shore Film Exchange when you first began to operate the Home Theatre? A. Yes, sir.

Q. Did you subsequently take service from the General Film Company? A. Yes, sir.

Q. Was the property of the Lake Shore Film Exchange purchased by the General Film Company? A. I don't know. Not that I know of.

Q. Did you change from the Lake Shore Film Exchange to the General Film Company? A. Yes, I changed the service.

Q. At the time that you were taking service for the Home Theatre from the Lake Shore Film Exchange what was your experience? Were you able to advertise your program in advance? 1

Mr. GROSVENOR: Objected to, as leading in form.

By Mr. KINGSLEY:

Q. You may answer? A. No, I was not.

Q. What was the condition at that time with respect to obtaining a fixed and definite program which you could advertise in advance? A. Well, in my entire experience with the Lake Shore I never knew what I got until I walked out of the exchange with it. 2

Q. Did you go there to get it yourself? A. Yes, sir.

Q. What was your practice with respect to getting your pictures at that time? A. Well, I usually went to the exchange, say at about ten o'clock in the morning, usually, in order to get the names of the pictures which we were to get, and it was often two o'clock, and sometimes later, before we would get these films.

Q. Was there more or less competition at the office of the Lake Shore Film Exchange among the exhibitors with respect to the programs that they were to have? A. They would give you a slip with the names of these reels on it, and by the time you would get them they would be taken off, probably all of them, and distributed to other exhibitors, and you would get an entire change of program. 3

Q. Do you mean to say you had the experience frequently of going to the office of the Lake Shore Film Exchange, and receiving from the booking clerk a slip, containing a program, which you were satisfied to have, and you were not able to get that program? A. Yes, sir. 4

Q. And you didn't get that slip until the morning you went to the exchange? A. I didn't always get it in the morning even, and sometimes would not get it until one hour before the time of getting the films, and then I would send the slip in, and it would be changed.

Q. Did you do anything to clear up this situation so you could get a fixed and definite program? A. There was not much I myself could do to obtain a different program at that time.

1 Q. Did you do anything to clear up the situation at the office so that you could get a program, and get it promptly?
A. Well, we tried.

Q. What did you do? A. Well, we spoke to Mr. Mandelbaum, who was the manager and owner of that exchange, and he would in turn say he would take it up with the booking clerk, and for obvious reasons, probably in a day or so, we would get a regular program on schedule time, and then it would go right back again to the same thing where you couldn't depend upon it.

2 Q. What were some of these obvious reasons? A. Well, one was you were supposed to get certain reels when the time came, and probably it might be when the time came they would take those reels and give them to somebody else because they put in a complaint—

Mr. GROSVENOR: I object to what the witness said as to "what probably might have been" as incompetent.

By Mr. KINGSLEY:

3 Q. Whatever the reason, they would take your reels and give them to somebody else? A. Yes, sir.

Q. Did you have at that time any competitor who was using the licensed service in your immediate neighborhood? A. Yes, sir.

Q. Did you have any difficulty in keeping your service clear from his service? A. Yes, sir.

4 Q. Were you troubled at all by his running duplicate pictures at the same time, or about the same time that you ran them? A. He would not run duplicates, because they were not buying that many, but say, for instance, if I was to get a picture, and they gave me the assurance that I would get it for tonight, or the next night, and after I would advertise it for a certain day, it probably would be shown the night before.

Q. Did you have that experience? A. Yes, sir.

Q. Did it happen frequently or infrequently? A. It didn't happen so frequently but on a number of occasions.

Q. After you began to take service from the General Film Company was there any change in this respect? A. Yes, sir.

Q. Did you find it possible to select a program in advance, or announce a program in advance? A. Well, they gave me a stipulated number of reels at a certain age, and of a certain make. That was the first time that was inaugurated in my experience.

Q. Did you begin to advertise? A. Well, I advertised, yes.

Q. And were you able to produce the program you advertised on the date set out in your advertisement? A. Well, not always either at the beginning, that is at the immediate beginning of the General Film.

Q. Did this condition improve or grow worse? A. It improved, just as soon as they were buying the stipulated output of the manufacturers.

Q. And what is the condition now, and what has it been for sometime back? A. Well, the condition today is that the exhibitors are getting, that is, my observation is that they are getting an equitable service for the price that they pay. They are getting a program at least a week in advance, pictures that you can figure on as far as the manufacturers' advance notes are published, and getting them on a stipulated date so many days old.

Q. Do you select your own program or permit the exchange to select the whole, or a part of it? A. I select given features, and they fill the program in.

Q. Do you ever make a special request for a special feature, or film which you think would be desirable at your theatre? A. Yes, I do, both for the regular film and the special film.

Q. Do you ever make a request for a regular film that you desire? A. Yes, sir.

Q. Do you ever have a modification of your program made by the General Film Company? A. In what respect?

Q. With respect to substituting one film for another? A. Yes, they do.

Q. Do you find they are willing to co-operate with you in that request? A. Yes, sir, to the best of their ability.

Q. Do they help you get out a special program in pursuance of your requests? A. Yes, sir.

Q. Have you been familiar with the prices of the motion picture service during the four years you have been operating the Home Theatre? A. Yes, sir.

1 Q. What service did you have at the beginning, and what was the price? A. From whom?

Q. Well, from the Lake Shore Film Company at the time you began to operate the Home Theatre? A. I paid them forty-five dollars a week.

Q. How many reels did that pay for? A. Sixteen a week.

Q. What service are you getting or using now? A. To-day I use thirty-five reels.

Q. And what do you pay? A. Sixty-five dollars.

2 Q. Has the price increased or diminished? A. Proportionately, it is cheaper.

Q. Do you find that the licensed makers of motion pictures are competing among themselves for the good will of the exhibitors? A. Yes, sir.

Q. Do they send you circulars? A. All of them send advance notices.

Q. And do you receive letters and circulars urging you to demand certain makes of films from your exchange? A. Yes, sir.

3 Q. What projecting machine do you use at the Home Theatre? A. Power's.

Q. Have you ever used the unlicensed service at the Home Theatre? A. No, sir.

Q. Have you any immediate competitor who is using the licensed service, and by that I mean the same service, in the immediate neighborhood? A. One.

Q. Do you have any difficulty with respect to keeping your program clear from his program? A. Well, we can't keep it clear, because both of us use the same amount of reels, but we have an understanding with the exchange and ourselves that is agreeable to us.

4 Q. Is the situation satisfactory so far as this competitor is concerned? A. Yes, sir, we are both satisfied.

Q. Have you any other competitor in the immediate neighborhood who is using the unlicensed service? A. Yes, sir.

Q. How many are there using the unlicensed service in your neighborhood? A. Two.

Q. What theatres are those? A. One is the Manhattan and the other one is the Comet.

Q. What is the seating capacity of the Manhattan? A. In the neighborhood of six hundred.

Q. And of the Comet? A. About three hundred and fifty, I should judge. 1

Q. What did you say the seating capacity of the Home Theatre was? A. Six hundred.

Q. What is the name of your competitor who has the licensed service in your neighborhood? A. Carlyon.

Q. What is his seating capacity? A. About four hundred and fifty.

Q. Did you say you had never used the unlicensed service? A. No, sir.

Q. Do you use any unlicensed film at all in your theatre now? A. Occasionally. 2

Q. How long have you been doing that? A. Oh, for six months.

Q. Are you solicited from time to time by the independent exchanges to change your service, and use the unlicensed service? A. Yes, sir.

Q. And do they offer you inducements in way of prices and programs? A. Yes, sir, somewhat.

Q. Are their prices cheaper or about the same? A. Well, one of them offers it a little cheaper, and the other one charges more. 3

Mr. GROSVENOR: No cross examination.

Thereupon, LELAND B. KENT, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed:

Direct examination by Mr. KINGSLEY:

Where do you live, Mr. Kent? A. Toledo, Ohio.

Q. How long have you lived in Toledo? A. Well, six or seven years. 4

Q. Were you at one time in the motion picture business in Toledo? A. In the exhibiting?

Q. Yes? A. No, sir.

Q. Were you at one time the owner of an exchange in Toledo? A. Yes, sir.

Q. When was it that you acquired an exchange in Toledo? A. Well, in about 1907.

Q. Did you start this exchange yourself? A. Yes, sir.

1 Q. What was the name of it? A. Kent Film Service Company.

Q. Did you manage it yourself? A. Yes, sir.

Q. How long did you manage the Kent Film Service Company in Toledo? A. About four years.

Q. What did you do with it? A. When I got through with it?

Q. Yes? A. Sold it.

Q. And to whom did you sell it? A. The General Film Company.

2 Q. Have you been in the moving picture business since you sold the Kent Film Exchange to the General Film Company? A. No, sir.

Q. Did you take a license from the Motion Picture Patents Company in 1909? A. Yes, sir.

Q. Did you have any objection to taking this license? A. No, sir.

Q. Did you enter into it voluntarily? A. Yes, sir.

Q. Did anyone tell you at the time you signed the license agreement of the Motion Picture Patents Company that any of its terms would not be enforced? A. No, sir.

3 Q. Did anyone tell you at that time that the provisions of the license agreement, relative to cancelling the license upon fourteen days' notice, would not be enforced? A. No, sir.

Q. Did you have any experience while operating a rental exchange with subrenting? A. While running a licensed exchange?

Q. While running your exchange? A. No, sir.

4 Q. Do you recall that in the license agreement which you signed with the Motion Picture Patents Company, there was a requirement for leasing at least twenty-five hundred dollars' worth of motion pictures per month? A. Yes, sir.

Q. Did you object to that provision? A. No, sir.

Q. At that time how much film were you leasing? A. Well, about \$1,400.00 a week, I think.

Q. Did you require that much film in order to serve your customers? A. Yes, sir.

Q. Did you favor, or disapprove, the provision in the license agreement calling for the return of film after it had been used for six months? A. I favored it.

Q. You favored the provision? A. Yes, sir.

1

Q. Did you believe it a desirable thing for the business that the film should be returned after it had been for six months in active use? A. Yes, sir.

Q. When you began to return film to the various licensed producers of motion pictures under the exchange license agreement, what film did you return, that is, what kind of film? A. Worn out film.

Q. Did you have a considerable supply on hand at the time you executed the license agreement with the Motion Picture Patents Company? A. I had what I would call a considerable amount.

2

Q. How much would that be? A. It was the purchases of ten to fourteen reels a week for the past two or three years, that is, worn out, and not worn out.

Q. Do you recall that at the beginning of the license arrangement that the Patents Company collected the royalties directly from the exhibitors? A. Yes, sir.

Q. Did you have any confusion or difficulty in the management of your business because of that fact? A. I never knew when my exhibitor had paid.

Q. Did you find that the situation was improved in this respect when the collections were made direct through the rental exchanges? A. Yes.

3

Q. Did you favor that change? A. Yes, sir.

Q. Who conducted the negotiations on behalf of your exchange for the sale of its stock and property to the General Film Company? A. I did.

Q. With whom did you transact the business of selling your exchange to the General Film Company? A. You mean who did I first write to?

Q. Well, with whom did you have the negotiations which led up to the sale of your film exchange to the General Film Company? A. My first letter was addressed to the General Film Company, and my second letter to Mr. Kennedy.

4

Q. Mr. J. J. Kennedy? A. Yes, sir.

Q. Were you making any money in the business at that time? A. Well, some.

Q. Had you been making some money for some time at it? A. Well, not a great amount of money.

Q. Would you call it a profitable or just an average business? A. Just an average business.

1 Q. Did you go to New York with reference to the sale of your exchange? A. After I had made the arrangements, yes, sir.

Q. Whom did you see when you went to New York? A. Mr. Kennedy.

Q. With whom did you negotiate for the sale of your exchange? A. Mr. Kennedy.

Q. Did you voluntarily sell your exchange? A. Yes, sir.

Q. What price did you sell it for? A. Well, about thirty thousand dollars, I think.

2 Q. Was that a fair price for your exchange? A. Yes, sir, I might say so. You know I was going to get all I could.

Mr. GROSVENOR: You would have been willing to take more?

The Witness: Yes, sir, and would have taken possibly less, if I could not have gotten any more.

By Mr. KINGSLEY:

3 Q. Were you asked at that time to make any agreement not to go back into the business again? A. No, sir.

Q. Were any arrangements made with you to remain with the business for a time to close it up or make some adjustment? A. Not until after I sold it.

Q. Did you, as a matter of fact, continue to operate it for some little time afterwards? A. For six months.

Q. During the six months you operated the exchange after having sold it to the General Film Company, were you permitted to use your own judgment in the methods of operating it? A. That was my instruction.

4 Q. Did you lease the films according to your own judgment? A. Yes, sir.

Q. Were any restrictions put upon you in any way? A. None at all.

Q. Were you ever interested in any theatre? A. No, sir.

Q. Did you become interested in any theatres after selling your rental exchange? A. No, sir.

Q. Was there any other independent film exchange operating in your territory at the time you sold? A. Yes, sir.

Q. What one was that? A. The Toledo Film Exchange, and the Superior Film Exchange. 1

Q. Do you know whether or not the Superior Film Exchange was at one time a licensed exchange? A. Yes, sir.

Q. It had been. Did it continue right along in business as long as you were in business? A. Not as a licensed film exchange.

Q. No. But did it continue as an independent afterwards? A. It went to pieces—well, the remnants of it is going yet. The men kept going to pieces as an independent.

Q. Didn't the owner die? A. The owner died. 2

Q. But the business is still going on in the same form? A. Yes, sir. 3

Cross examination by Mr. GROSVENOR:

Q. Mr. Kent, you sold out your exchange to the General Film Company in January, 1911? A. Yes, sir.

Q. At the time you sold your exchange, the General Film Company had been in business about eight months? A. About that time.

Q. And in that period of eight months, the General Film Company had acquired something like fifty rental exchanges throughout the United States? A. Well, I don't know the number, but nearly all of them they had acquired. 3

Q. You were one of the last to sell out? A. Yes, sir.

Q. You knew that it had acquired these numerous exchanges throughout the country before you endeavored to sell out to that company? A. Yes, sir.

Q. Your company and business had been profitable, had it not? A. Well, moderately so.

Q. How much capital did you put in in 1907 when you started the rental exchange? A. \$3,500.

Q. And how much had you taken out in four years? A. Well, a living. 4

Q. You had taken out a good many times \$3,500, hadn't you? A. No.

Q. Well, what had been your annual profit? A. Oh, I would say \$50 a week.

Q. And your entire investment had been \$3,500? A. Yes, sir.

Q. The fact that the General Film Company had acquired all these numerous exchanges in the country was one of the

1 reasons that made you desirous of selling out, wasn't it? A. Well, could I answer you like this? That I had run a country store for a number of years, and I called my neighbor over and sold out to him. Then I came to Toledo, and started a film exchange, and I ran that these years, and I thought it was a good chance to sell, and I wrote them and offered to sell. I sold the film exchange on the same grounds that I sold the store.

Q. The General Film Company, by reason of its size and numerous branches, had an advantage over you in the matter of competition, did it not? A. No, I might say not.

2 Q. Had the General Film Company a branch in Toledo at the time you sold out? A. No, sir.

Q. Have they a branch there? A. No, sir.

Q. Then the Toledo houses are supplied from what branch of the General Film Company? A. Well, it is divided among Cleveland, Detroit and Chicago.

Q. When you went to New York, did you see anybody besides Mr. Kennedy? A. I saw Mr. Waters.

3 Q. And he took you in to Mr. Kennedy? A. No, I think I met Mr. Kennedy—I had got to the room before he had, and he came back and introduced himself to me.

Q. And did you have any dealings with any one other than Kennedy and Waters? A. No, sir.

Q. Did Mr. Kennedy take a paper and show you certain figures and state to you that was what you would be offered? A. No, sir.

Q. How did he make his proposition to you? A. Talked it over, and he made me a price. Is that what you mean?

Q. And he made you a price? A. Yes, sir.

Q. And that is the price you took? A. Yes, sir.

4 Q. And does the General Film Company owe you something today on that purchase? A. Yes, sir.

Q. How much of the \$30,000 is still due you? A. Well, there is still due me in money that they promised to pay me, about one-third.

Q. You still have about ten thousand dollars coming to you? A. I have. Stock. And about one-third of the cash price is coming to me.

Q. You took \$8,000 preferred stock, and \$23,980.81 cash; so that you have about \$8,000 in cash still coming to you? A. Nearly that.

Redirect examination by Mr. KINGSLEY:

1

Q. Was the stock delivered to you? A. Yes, sir.

Q. Does the stock bear interest? A. Yes, sir.

Q. How much? A. Seven per cent.

Q. Has the interest been paid? A. Yes, sir.

Recross examination by Mr. GROSVENOR:

Q. In using the term "interest," you mean dividends on the stock? A. Yes, sir.

Q. That is, it is a 7 per cent. stock? A. Yes, sir.

2

Redirect examination by Mr. KINGSLEY:

Q. Have the dividends been paid each year? A. Yes, sir.

Q. Did the deferred payments draw interest? The cash payments? A. Yes, sir.

Q. And have the payments with interest been made as they came due? A. Yes, sir.

Q. I want to ask you with respect to the \$2,500 a year that you drew out of your exchange for living purposes. Did you charge your exchange with your own salary? A. No.

Q. So that that was in lieu of a salary, the money that you drew out for your living? A. That was my salary. That is, I took about that much to live. I had gone to Toledo with what I called about \$3,500 of West Unity money. I left enough so that when that was gone, I could come back there without their laughing at me. You know, I came from the country, and I expected to go home busted.

3

Q. West Unity was the town you came from? A. Yes, sir. Born and raised there. Ran a country store.

Q. Did you in your expenses, charge your rental exchange with any salary for your own services? A. No, sir.

4

Q. But you did take out \$50 a week? A. About \$50. Some weeks maybe not that. About \$50.

Whereupon, at 12:30 P. M., the hearing is adjourned until 2:00 o'clock P. M. at the same place.

1

CLEVELAND, OHIO, Tuesday, January 6, 1914.

The hearings were resumed at 2 o'clock at the Hotel Statler, pursuant to adjournment.

Appearances as at the morning session.

JOSEPH R. DENNISTON, the next witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposes as follows:

2 Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Denniston? A. Monroe, Michigan.

Q. How long have you lived in Monroe, Michigan? A. It will be three years next May.

Q. In what business are you engaged? A. Moving picture theatre.

Q. And do you own or operate a moving picture theatre in Monroe, Michigan? A. I do.

3 Q. What is the name of the place you operate? A. The Family Theatre.

Q. What is its seating capacity? A. Two hundred fifty.

Q. How long have you had it? A. Well, it was 2 years last May.

Q. Before that time, did you have another theatre? A. Yes, sir.

Q. Before that, did you have any others? A. I owned two at Paulding, Ohio.

Q. What were the names of those theatres, and their seating capacities? A. The Family Theatre, seating capacity, 200; and the Amuse-You, 420.

4 Q. Before you went to Monroe, where did you live? A. Paulding, Ohio.

Q. And did you have these theatres in Paulding, Ohio, before you went to Monroe, Michigan? A. Yes, sir.

Q. How long have you been a motion picture exhibitor altogether? A. Well, I don't believe I can give you the exact date.

Q. The approximate date will do. A. Seven or eight years at least, or longer.

Q. Were you in Paulding, Ohio, before the formation of the General Film Company? A. Oh, yes, sir.

Q. What kind of service did you use in the theatres in Paulding? By that I mean, did you use licensed or unlicensed service? A. Both. 1

Q. Do you mean by that that you ran licensed service in one house, and unlicensed in the other? A. That is the way we run it, yes.

Q. How were these houses located with reference to each other? A. They were directly opposite each other on the same street in the business district.

Q. How many years did you run them with licensed and unlicensed service in competition? A. Well, now, I owned the Family Theatre. It was first known as the Theatorium. I owned that 2 or 3 years, and ran it 2 or 3 years before I bought the other one, and it is probably somewhere between 8 or 9 months or a year that I ran independent service in the Amuse-You. 2

Q. While you were running the Family Theatre, and before you bought the Amuse-You Theatre, what service did you use, licensed or unlicensed? A. I used the licensed.

Q. And from what rental exchange did you obtain your service for the Family Theatre? A. It was then known as the Theatorium. It was not known as the Family until I enlarged and remodeled it. 3

Q. After it was enlarged and remodeled, what was its seating capacity? A. Two hundred. Before that time, they were both about the same, about 125 seats. And I got my service from Columbus, Mr. Melchior, the Ohio Film Exchange, and Mr. Kent in Toledo, and also at one time from Mr. Smith, when he had the Toledo Film Exchange. I got service from Dayton, Ohio, the Buckeye, Lake Shore.

Q. Had you sold the Family Theatre and the Amuse-You Theatres at the time you opened in Monroe, Michigan? A. No. 4

Q. So at one time you were running three theatres at once? A. At one time I had the three, yes.

Q. At the time you were running the three theatres, was the General Film Company operating in this territory? A. Yes, sir; it was operating at that time.

Q. From what source were you obtaining your motion picture supply for the theatre in Monroe, Michigan? A. When I bought the house, it was running independent, and I run it independent for some time, I don't know just how long, and then I changed it to the licensed.

1 Q. And from what source did you obtain the licensed service then? A. From the General Film Company, Detroit.

Q. Before the General Film Company began to operate in this territory, did you find it possible to advertise a program in advance for your theatres? A. Well, it would not be where you had competition, and of course we had.

Q. Did you have competition in Paulding? A. Yes, sir, I had before I bought the other house out.

2 Q. Was the other house a licensed house at the time you bought it out? A. Well, at the time I bought it, I think it was—I know it was before the General Film Company was formed. It was both. It had changed from one to the other. Part of the time licensed, and part of the time independent.

Q. At the time the Amuse-You Theatre was running as a licensed house, was it in competition with the Family Theatre or the Theatorium, as you then called it? A. Yes, sir.

Q. Did it, during part of that time, use the licensed service? A. Oh, yes, most of the time.

3 Q. Did you have a conflict or conflicts with the Amuse-You Theatre during that period? A. Yes, sir, we did, continually. One case in particular was when I had arranged to run "Damon and Pythias" there, and we were co-operating with the Pythian Sisters, and they were selling tickets for us, and boosting it in every way possible, and sharing the profits. The day before we were to run this picture, they got it out of the Toledo office, and ran it previous to the night that we had advertised it for.

Q. Did you have a similar experience at other times with other pictures of less note? A. Oh, yes, that was of frequent occurrence.

4 Q. Did you find it possible during that period to determine upon a definite program in advance, and with the certainty of showing it on the day set? A. We scarcely ever knew what we were going to have until the express came in with the films. We opened up our package to see what we had. It was a gamble.

Q. Since you have been taking service from the General Film Company for your theatre at Monroe, have you been able to announce a program in advance, and to advertise it? A. Yes, sir; I have advertised in advance all the time. We put out weekly programs, usually.

Q. Do you receive your programs as promised you? A. I do. 1

Q. Do you select your program, or do you permit the exchange to select it, largely, for you? A. Well, we have a schedule that we run on, that we run certain releases on a certain day.

Q. Do you ever ask the exchange to make changes in your program, and give you certain subjects? A. Frequently. We see certain subjects that are released that we would rather have in preference to what we have on our schedule, and always make arrangements to get them.

Q. Were you able to do this when you were taking service from the Ohio Film Exchange? A. Well, we did not know what we were going to get then, until we got it. 2

Q. Do you find that the General Film Company is willing to co-operate with you in arranging a program that will satisfy you and your public? A. They have done so so far, yes, sir.

Q. With reference to the prices of motion picture service, have you been familiar therewith for the past few years? A. Yes, sir; for seven years, at least.

Q. How does the price of the licensed motion picture service you are now showing in your theatre, compare with the prices that you were paying prior to the advent of the General Film Company in this field? A. Well, it is cheaper, compared with the number of reels that I run and the quality. 3

Q. How many reels were you running in the Family Theatre or the Theatorium in 1909? A. Six reels a week.

Q. How many reels are you running in the Monroe Theatre at present? A. Twenty-three—24.

Q. What was the price you were paying for the service in the Family Theatre in 1909? A. Well, it run—it varied some, but we paid between \$20.00 and \$30.00. 4

Q. What price do you pay for the service you are now using in the Monroe Theatre? A. \$43.00. But you must understand that the service that I used in the Family Theatre at Paulding, when I was paying from \$20.00 to \$30.00 was ranging anywhere from sixty days to six months old, and some of it was even older than that, and my service ranges now from nine days to 43 days old.

Q. Yes. And you have already told us the addition in

1 the number of reels? A. Yes, sir. I am using just four times the reels now that I did then.

Q. Do you find that the licensed producers of motion pictures are competing with one another in attempting to obtain the favor of the exhibitor? A. It appears to me that the competition is very keen. We are continually circularized and solicited through the mails to demand different brands of film, and especially films that the companies think are a little above the average. I have also had men, especially from the Edison office, call on me for an expression as to what kind of film the exhibitors wanted, so that they could sort of feel the pulse of the exhibitor.

2 Q. What projecting machines have you used in your theatres? A. Edison and Powers.

Q. Did you find it necessary when you owned both the Family and Amuse-You Theatres in Paulding, Ohio, to run unlicensed service in the Amuse-You Theatre? A. Well, of course, at that time neither the licensed or independent had reels enough to supply both houses without a conflict, or at least later on when we began running 12 reels on each side of the street—at that time Mr. Kent was serving us in one house, and he was only buying 14 reels, and we were using 12, and, of course, the independents did not have any more.

3 Q. What competition do you have in Monroe? A. We have the Opera House, runs pictures Saturdays and Sundays. Then, there are two other theatres that run every night.

Q. What are the two other theatres, licensed or unlicensed? A. They are all independent.

Q. Does the Opera House run licensed or unlicensed pictures? A. They run the unlicensed. Independent.

4 Q. So that the other three places which show pictures in Monroe are all unlicensed or independent? A. They are.

Q. Yours is the only licensed house there? A. Yes.

Q. What is the seating capacity of the Opera House? A. Seven hundred.

Q. What is the seating capacity of the other two houses? A. One of them has a seating capacity of 600 and one of them has a seating capacity of 200.

Cross examination by Mr. GROSVENOR:

1

Q. Have you ever shown any independent pictures? A. Yes, sir.

Q. How recently? A. Well, not for 2 years. A little over 2 years. Except on a few occasions, I ran feature films that were independent.

Q. Then, for the last two years, your Family Theatre at Monroe has been a so-called licensed house? A. Yes, sir.

FRANK M. KENNEY, the next witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposes as follows:

2

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Kenney? A. Cleveland.

Q. In what business are you engaged? A. Motion picture business.

Q. How long have you been engaged in that business? A. Seven years.

Q. Have you been located in Cleveland during the seven years? A. Yes, sir.

3

Q. Are you operating a theatre now? A. Yes, sir.

Q. Where is it located? A. On Clark Avenue, corner 46th Street.

Q. What is its seating capacity? A. Three hundred and sixty.

Q. How long have you been operating this theatre? A. Four years.

Q. What is the name of it? A. Clark Theatre.

Q. Did you operate a theatre before that? A. Yes, sir.

Q. Where was that located? A. Right across the street.

4

Q. What was its seating capacity? A. Oh, 120.

Q. How long did you have that theatre? A. Three years.

Q. What was its name? A. Clark. The same.

Q. Are these two theatres the only ones that you have operated in Cleveland? A. Yes, sir.

Q. What service are you using in the theatres that you are now operating? A. General Film service.

1 Q. By that you mean the licensed service? A. Licensed service.

Q. What service did you use in the other theatre? A. Well, independent service.

Q. How long did you use independent service altogether in your other theatre? A. Well, I used independent service three years in the other theatre.

Q. What did you do with your theatre then? A. I closed it up and built a bigger place and moved across the street.

2 Q. Did you close it up before you built the other place, or did you first build the other place, and then close the old one up? A. I went right from one place to the other.

Q. That is, the other place was already waiting for you? A. Yes, sir.

Q. From what exchange have you been obtaining your motion picture service for the past three years? A. From the Lake Shore, the Victor Film Service, and the General Film Service.

3 Q. Did you get licensed or unlicensed service from the Lake Shore? A. I got licensed service first, and later on, unlicensed service.

Q. What did you get from the Victor Film Service? A. Well, the so-called Universal service.

Q. And these were all used in the theatre which you have since closed? A. No. The licensed service is the only service I used—that is, it was not called licensed service in the first part, but later on it was called licensed service, and I used licensed service up to the time I closed, and I started across the street with licensed service.

4 Q. How long had you been using licensed service in the first theatre to which you have referred, before you closed it? A. Well, about a year.

Q. You have had the present theatre about three years? A. Four years.

Q. Four years. And for a year prior to that time, you had been using licensed service in the other theatre, is that correct? A. No. When I first started the other theatre, there was no such thing as licensed service. It simply was a service, and later on, the licensed service came into effect, and I used it from that time on for about a year until I closed up.

Q. Yes. A. And I started across the street with licensed service. 1

Mr. GROSVENOR: Then for five years you have been using the licensed service, is that what you mean?

The Witness: Yes, sir—

By Mr. KINGSLEY:

Q. Have you? That is just the point. A. No—wait a minute. I have been using licensed service two years and a half. 2

Q. What did you use before that? A. When I first started, we did not know any difference between licensed service and any other kind of service. It was simply a service.

Mr. GROSVENOR: He means two years and a half he has used General Film Service.

The Witness: No, one year and a half I used General Film Company's. 3

By Mr. KINGSLEY:

Q. What did you use just before that? A. I used the licensed service, but the General Film Company had not come into existence.

Q. I see. Now, Mr. Kenney, do you know what year you first went into business, in the motion picture exhibition line, I mean? A. Well, it must have been about 1906.

Q. And what year was it that you went into your second theatre? A. Well, it would be 1909. 4

Q. And all the time that you have been in the theatre into which you went in 1909, you have been using licensed service, have you not? A. No, sir.

Q. Did you ever use independent service in the theatre which you opened in 1909? A. Yes, sir.

Q. Well, during what period did you use independent service in your second theatre? A. Well, let's see—I used independent service about a year and a half.

1 Q. Was that in 1909, and the early part of 1910? A. That was in 1909 and 1910, yes, sir.

Q. And then did you begin to take service from the General Film Company? A. I did not begin to take service from the General Film Company until about a year and a half ago, which would bring it in about 1911.

Q. When was it that you first began to use licensed service in the house which you opened in 1909? A. About a year and a half ago. As near as I can remember.

2 Q. From what branch of the General Film Company are you taking your service now? A. I am taking from—well, the Cleveland branch of the General Film Company.

Q. And from what exchange were you taking it just before you began taking it from the Cleveland branch? A. The Victor Film Service.

Q. Was that service from the Victor what was known as the Universal service? A. Yes, sir.

Q. How long did you take service from the Victor? A. Oh, about eight months.

Q. Before that from what exchange? A. The Lake Shore.

3 Q. And what service were you getting from the Lake Shore during that period? A. Why, partly licensed and partly independent.

Q. Were they at the same time giving you partly licensed and partly independent? A. They were towards the latter end. When their license was cancelled they took the independents on, and I came up and stayed right on with them, and then went from one to the other.

Q. From them to the Victor? A. Yes, sir.

Q. And from the Victor to the General Film? A. Yes, sir.

4 Q. During how long a period of time did you take the licensed service from the Lake Shore? A. Oh, I should judge two years.

Q. During the period that you were taking the licensed service from the Lake Shore Film Company were you able to advertise a fixed and definite program in advance? A. Not too far ahead, because somebody would beat me to it.

Q. What do you mean by saying somebody would "beat you to it?" A. The other film company had put up a house in opposition to me, and as soon as I would get out

a big poster, showing some picture that I would have on a certain day of the week, nine times out of ten I would have to cancel it because they would beat me to it the day before. 1

Q. What other film company do you refer to? A. I refer to the National.

Q. Do you mean the National Vaudette? A. I mean—well, let me study. I mean the United Film Exchange.

Q. And what would happen under those circumstances? A. Well, I would advertise a picture to be run on a certain date, generally on Sunday. Well, along about Saturday the United would furnish to the competitor the reel that I had advertised, and kill it for me. 2

Q. Do you know whether or not the United owned a competing theatre? A. A half owner of the United Film Exchange owned this theatre put up in opposition to me.

Q. Did you find that the United favored this theatre? A. Yes, sir, it surely did.

Q. As against you? A. At every opportunity.

Q. Since you have been taking service from the General Film Company have you been able to announce a program in advance, and to advertise it and show the program on the date advertised? A. Yes, sir, I always get my program a week in advance. 3

Q. Are you advertising your program? A. Yes, sir.

Q. Do you ever make a request of the General Film Company to modify or change your program in order to get certain pictures which you think are desirable? A. Yes, sir, I ask for changes almost every week.

Q. Do they co-operate with you and meet, or grant, your requests? A. Yes, sir, without it is being served some place else at that time.

Q. Have you kept in touch with the progress of the motion picture art for the past four or five years, to the extent of noticing whether the licensed service is improving or retrogressing? A. Yes, sir. 4

Q. What is your opinion as to whether it has improved or deteriorated? A. It is at least a thousand per cent. better than it was two or three years ago.

Q. Have you been conversant with the prices of the motion picture service to theatres during the past four or five years? A. Yes.

1 Q. How do the prices which you paid when you were taking the licensed service from the Lake Shore Film Supply Company compare with the price you are now paying for licensed service from the General Film Company? A. Why, taking everything into consideration, if anything, it is a little bit cheaper.

Q. How do the programs compare in number of reels? A. Well, where I originally had two reels, that is, four changes a week, and eight reels a week, I now have twenty-five.

2 Q. What did you pay when you had eight reels a week? A. Twenty-five dollars.

Q. What do you pay for twenty-five reels now? A. Thirty-five dollars.

Q. Have you observed whether or not the producers of licensed motion pictures are competing with one another in endeavoring to obtain favor with the exhibitors? A. Yes, sir, I have a bunch of mail every day from each one.

Q. Do they send you circulars and letters, urging you to demand of your exchange certain prints of motion pictures? A. Yes, sir.

3 Q. Certain subjects? A. Yes, sir.

Q. Do the independent exchanges solicit your business from time to time? A. Yes, sir.

Q. Do they offer you any inducement, either in the way of programs or prices? A. Well, not on prices, but they do on features in various ways.

Q. You have used both the licensed and unlicensed service? A. Yes, sir.

4 Q. How do you find the prices of the licensed and the unlicensed service compare with each other? A. Well, there is not very much difference.

Q. What projecting machine do you use in your theatre? A. The Edison.

Q. Have you always used an Edison projecting machine? A. Yes, sir.

Q. What was the name of the owner of the theatre which was in competition with you, and which was favored by the rental exchange? A. Why, it was owned by Mr. Kohl, of Kohl & Heintz.

Q. Had Mr. Kohl, or any of his representatives, solicited you to take service from his exchange? A. Yes, sir.

Q. Had there been any dispute, or discussion, between you respecting whether you should transfer your business to that exchange? A. Yes, sir, there had. For instance, he solicited me, or solicited my business once, and I said that "I am pretty well satisfied where I am," and he just said, "You had better come along Ken," and I said, "I am pretty well satisfied—"

1

MR. GROSVENOR: I object to the statement of the conversation, because it has no bearing on any of the issues in this case, and it is incompetent.

2

By Mr. KINGSLEY:

Q. Proceed. A. He simply stated then, "One of these days you will wake up probably, and find another house going up in your neighborhood."

Q. And "find another house going up in your neighborhood?" A. Yes, sir.

Q. This was the man who was the owner of that exchange, or the part owner? A. Yes, sir. Mr. Kohl and Mr. Heintz.

Q. What exchange was Mr. Kohl interested in? A. The United Film Exchange.

3

Q. You say he was a half owner? A. Yes, sir.

Cross examination by Mr. GROSVENOR:

Q. You took your service from the Lake Shore Film Company for a considerable period? A. Yes, sir.

Q. And you continued with them after their license had been cancelled by the Patents Company? A. Yes, sir.

Q. Do you recall that at about that time the General Film Company, that is in 1910, had acquired a large number of the rental exchanges throughout the country? A. Yes, sir.

4

Q. The Lake Shore Film Company was one of the last of the so-called licensed exchanges to remain in business? A. Yes, sir.

Q. Now, as I understand you, after their license was cancelled, and they took on the independent films, you endeavored to stay with them, and did stay with them for a few months? A. I stayed with them longer than a few

1 months. I stayed with them at least a year, and I think possibly more. I can't tell exactly.

Q. And the reason you made a change at that time was because they had changed their service? A. Well, I was looking over their stuff to see, and it was satisfactory, and I went along with them.

2 Q. What caused you to change back to the licensed service? A. I didn't change from the Lake Shore to the licensed, but from the Lake Shore to the Victor through a dispute Mr. Mandelbaum and myself had, a personal matter that had no bearing on the film situation, and I went to the Victor exchange, which was the Universal service.

Q. What was Mr. Mandelbaum's, the Mutual? Well, no, it was not in existence then? A. It was not in existence.

Q. What had Mr. Mandelbaum been giving you? A. He had been giving me licensed service up to that time—I run along, and I went in under the independent service, that is, the new makes of the independents. Of course, after the license was cancelled they naturally didn't buy any more licensed stuff.

3 Q. For how long a time did you take from the Victor? A. About eight months.

Q. And from them you returned to the licensed? A. I went to the licensed.

Q. Why did you do that? A. I went with them for the simple reason I was satisfied with the service, but my competitor had quit the licensed service and went to the Lake Shore, and the Lake Shore had some system of interlocking or interchanging the third reel so that between two weeks' changes, the result was that half of the time I had the third reel that he run, and he had the third reel
4 that I run, and I simply looked for a service that was clear.

Re-examination by Mr. KINGSLEY:

Q. In explaining your service, you did not say whether it was the Victor service, or the General Film Company, but you said you were satisfied with "their" service? Did you mean you were satisfied with the Victor service? A. I mean I was satisfied with the Victor pictures.

Q. It was because of this interlocking system that you

changed? A. Yes, sir, interlocking, and repeating on my competitor, that I changed to the licensed service. 1

Thereupon JOHN DANIEL KESSLER, the next witness produced by the defendants, of lawful age, first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY :

Q. Mr. Kessler, where do you live? A. Sandusky, Ohio.

Q. How long have you been a resident of Sandusky, Ohio? 2

A. I have been born and raised there.

Q. What business are you engaged in? A. The theatrical business.

Q. How long have you been in the theatrical business?

A. I have been in the theatrical business, with the Star Theatre, since I started the theatre, going on four years.

Q. Is the Star Theatre a motion picture theatre? A. Yes, sir.

Q. Had you owned or operated any other theatre prior to this? A. I operated the Jewell Theatre in Toledo, and I was under Mr. Braley, at the Princess Theatre at Toledo. 3

Q. Did you operate the Star and Jewell theatres together at any time? A. No, sir, the Jewell was at Toledo, and the Star at Sandusky.

Q. Did you operate them at the same time? A. No, sir.

Q. After you left the Jewell did you go to the Star Theatre? A. After leaving the Jewell Theatre I bought what they called the Diamond Theatre, at Toledo, and though a little piece of crooked work I was done away with, and I came back to Sandusky, and opened up the Star Theatre. The place was closed there for about two years.

Q. The Star Theatre was operated continuously for four years? A. Yes, sir, for four years. 4

Q. What is its seating capacity? A. Three hundred.

Q. Have you any competition in your immediate neighborhood? A. Yes, sir.

Q. What service do you use in the Star? A. The General Film Company.

Q. What service is used by your immediate competitor? A. One uses the General Film, and the other theatre the independent.

1 Q. What are the names of those two theatres? A. Which ones, both of the independents?

Q. I mean the one that uses the General Film, and the one that uses the independent? A. The one that uses the General Film is the Gem Theatre.

Q. What is the seating capacity of the Gem Theatre? A. I think that it has about two hundred and fifty some odd, I don't know.

Q. And the independent? A. I think it is has a hundred and eighty-four.

2 Q. What is the name of it? A. Theatorium.

Q. Is there another independent theatre in your neighborhood? A. The Royal, 120, and the Opera House, I think, 1200 seats.

Q. Is the Opera House independent? A. Yes, sir.

Q. Does that run motion pictures intermittently? A. No, just on Sunday, and then sometimes during the week.

Q. Do you use the licensed service exclusively in the Star Theatre? A. Yes, sir, but I have used the Famous Players also, in the Star Theatre.

3 Q. How long have you been using the licensed service in the Star? A. Since I opened the doors.

Q. When you first began to operate the Star Theatre from what exchange did you obtain your motion picture service? A. The Kent Exchange, Toledo, Ohio.

Q. Now, after the sale of the property of the Kent Exchange to the General Film Company did you continue to take your service from the General Film Company? A. Yes, sir.

4 Q. Before the General Film Company began operating in the Toledo field, did you find it possible to announce and advertise a definite program in advance with any certainty of being able to show the program on the day stated in your advertisement? A. No, sir. In one hour I could go to work, and put out a poster, and the fellow I was opposing, he might get that film.

Q. What was the situation with respect to getting a program at that time? A. You couldn't get one. I would go down there very early in the morning, and stay there, and try to get out a program, and someone would come in and say "You promised it to me" and I would lose out, and they would give it to him. On different occasions I have seen people come in there, and I would have that film booked for

my theatre, and they would say "You keep this film back for me" and it was absolutely taken away from me, when I was practically devoting all of my time looking after the film. 1

Q. Now you say "You would go down there." Do you mean down to the office personally to see about getting your show? A. Yes, sir.

Q. Did you personally try to get a satisfactory program? A. Yes, sir. A program that he told me I could have at least two days in advance, and then the very last minute he would take it away from me.

Q. Did you have any difficulty or trouble with keeping your program clear with respect to your competitors in the neighborhood? A. I never could keep it clear, but I would sometimes slip one over on him, and he would sometimes slip one over on me. 2

Q. This was an interchange of courtesies that was going on from time to time? A. Yes, sir.

Q. Since you have been taking your service from the General Film Company have you found it possible to get a program in advance and advertise the program in advance? A. Yes, sir, I can advertise it a week, or a month in advance. 3

Q. What has been your experience in reference to being able to obtain the program on the date designated in your advertisement? A. It always comes, no delay whatever, except through the express company, the trains might be late, but nothing outside of that, I have never had any trouble.

Q. How far is Sandusky from Toledo? A. I should judge about sixty miles.

Q. When you were operating the Jewell Theatre, in Toledo what service were you using? A. The Kent Film Company's.

Q. What service did you use in the Diamond Theatre? A. I was pretty nearly down and out when I commenced to operate that. 4

Q. Then you didn't have much service? A. No, sir, I had all of my service going to the boneyard.

Q. What projecting machine did you use in the Star Theatre? A. At the present a Powers, and a Simplex. I have used the Edison; I have an Edison.

Q. Have you kept in touch with the prices of the motion

1 picture service during the four years you have been operating the Star Theatre? A. Yes, sir.

Q. How do the prices which you are now paying the General Film Company compare with the prices you paid to the Kent Film Exchange early in 1910? A. If I had kept on at the prices I paid in 1910, I don't believe I would have been in existence today. I got twelve reels and paid seventy-five dollars, and I get twenty-eight reels today, and pay eighty-five dollars, for the service, and get my advance program.

2 Q. Do you find that the manufacturers of the licensed motion pictures are competing with one another in trying to create favor with the exhibitors? A. Yes, sir, for the betterment of the business today.

Q. Do they send you circulars, and call your attention to the merits of their productions? A. Yes, sir.

Q. And are they sending you circulars and letters, urging upon you the desirability of interesting your exchange in giving you certain pictures, or certain subjects? A. Yes, sir. Also, they want to find out what is better for the public. They are always wanting to do something for the betterment of the picture game.

3 Q. What do you say as to whether the motion pictures in the past three or four years furnished by the licensed manufacturers, or producers, have improved, or gone back in quality and artistic excellence? A. They have improved a thousand per cent., not a hundred, but a thousand per cent. to my imagination.

Cross examination by Mr. GROSVENOR:

Q. You have run regularly a licensed theatre? A. Yes, sir, in these four years.

4 Q. During those four years? A. Yes, sir.

Q. And this theatre has been profitable during that period? A. Yes, sir.

Q. Throughout that period since you opened it? A. Yes, sir. It had been used as an independent theatre before that.

Q. Did you succeed in that? A. I didn't use it, but the man that had it didn't.

Q. He didn't succeed? A. No, sir.

Q. Then in spite of this interchange of courtesies between you and your competitor, referred to on your direct examina-

tion, your theatre was profitable? A. Yes, sir. It is one of the most up-to-date theatres in the city, and is respected by the most high-class people in the city, and all my credit lies to the General Film Company.

Q. How large did you say your theatre is? A. Well, it is 300, or, rather, two hundred and seventy-six, but three hundred seats, if we get the front seats filled.

Q. And from what branch of the General Film Company do you get your film? A. From Cleveland, Ohio.

Q. Are features an important part of the program in your theatre? A. It is according to what they are. There are a lot of them which are a detriment to a theatre, and there are a lot that are very good. I have some features that were the greatest advertising of the day, put out by the licensed people. I ran a picture here not long ago, "When Love's Sun Sets," a picture that can be run in any theatre a full week straight.

EDWARD M. SMITH, the next witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposes as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Smith? A. Grand Rapids, Michigan.

Q. How long have you lived there? A. About ten years.

Q. What business are you in? A. Theatrical business.

Q. What kind of theatrical business? A. Well, we have a vaudeville house, and picture houses.

Q. Two separate houses? A. Six.

Q. How many motion picture houses have you in Grand Rapids? A. Five, exclusive.

Q. One mixed vaudeville— A. Vaudeville and pictures.

Q. How long have you been in the business of exhibiting motion pictures in Grand Rapids? A. Well, about nearly six years in Grand Rapids.

Q. You have had six motion picture houses all the time? A. Not all the time, no sir.

Q. Have you had more than one during all that period? A. Well, one at first just for a few months, and then we took over three more, and so on.

Q. Will you begin with the first house you had, give the

1 name and seating capacity of each one, and about the time that you started it. I don't care about the exact dates. If you are approximately right, that will be near enough for our purpose. A. Well, the first house that I had was in Saginaw, Michigan, seated about 200. Then I built another one there that seated about 350. Then a little later I went to Grand Rapids. I had lived in Grand Rapids all the time, but I did not start in the business there. Then the next theatre seated about 260. The Idea Theatre.

2 Q. What was the year that you started the Idea Theatre?
A. That was five years ago. It would be 1908.

Q. What was the next theatre that you built there? A. I was interested in taking over three others at one time.

Q. So that in a short time you had four theatres operating in Grand Rapids? A. Yes.

Q. Now you have six? A. Yes.

Q. What are the seating capacities of these six theatres?
A. I have one that seats 148; one, 312; one, 250. Another one, 260. One 1087, and one, 1111.

3 Mr. GROSVENOR: Which of those is the one that is part vaudeville?

The Witness: The one that seats 1111.

By Mr. KINGSLEY:

Q. Do you know how many unlicensed theatres there are in Grand Rapids? A. Well, there are 8 that are unlicensed.

Q. Do you know their seating capacities? A. Not exactly—no, I do not.

Q. How many other licensed theatres are there in Grand Rapids aside from yours? A. None.

4 Q. Are all your houses licensed houses? A. Not at the present time, no, sir.

Q. How many of your houses are licensed houses? A. Let's see—we have four.

Q. Will you name those and give their seating capacities? A. Monroe Vaudette, 150; Idle Hour, 312; and the Columbia Theatre, that is the one that is part vaudeville and part pictures, runs licensed pictures, and that seats 1111. Those are the only ones that run exclusively licensed.

Q. Now, will you name the houses which are unlicensed,

and give their seating capacities? A. The Original Vaudelette, 260; the Orpheum, 1087, runs part licensed and part unlicensed, the Idea Theatre, about 260, does the same. 1

Q. Now, to make it perfectly clear on the record, I will ask you how many additional licensed houses are there in Grand Rapids? A. There are none.

Q. And how many additional unlicensed houses, did you say? A. There's 17 houses up there all told, I think. They are going up so fast lately—there are eight that are independent.

Q. In addition to the ones that you operate? A. Yes, sir. 2

Q. Do you know the seating capacity of those eight? A. I don't know exactly; no, sir.

Q. Now, Mr. Smith, during the years that you have been a resident of Grand Rapids, have you been familiar with the prices of licensed picture service to exhibitors from exchanges, both from exchanges dealing in licensed, and exchanges dealing in unlicensed pictures? A. I have.

Q. How do the prices of the unlicensed exchanges in furnishing a program to the exhibitors, compare with the prices of licensed exchanges furnishing programs of motion pictures to the exhibitors? A. Why, considering the number of reels furnished, the prices are approximately the same. 3

Q. Do the independent exchanges furnish you with a complete program for the theatres which use the independent service? A. Why, a portion of the time. Their programs are a little more unreliable. They attempt to furnish them.

Q. Is that a matter of business detail, or a matter of production? A. I think perhaps it is a matter more of business detail than anything else. 4

Q. From what licensed rental exchange are you now taking licensed service? A. Detroit branch of the General Film Company.

Q. From what licensed rental exchange were you taking licensed service before 1910? A. Well, I took of the Vaudelette Film Exchange of Grand Rapids.

Q. At the time you were taking licensed service, before you began taking licensed service from the General Film Company, did you find it possible to advertise a program in advance? A. No, sir.

1 Q. Why couldn't you do that? A. They seemed to be unable to furnish it.

Q. Did you have any difficulty with respect to keeping your programs clear? A. That was out of the question. We simply could not do it.

Q. Did you find it possible to select a program several days in advance and have it delivered to you on the day you desired? A. No, sir. We were fortunate to get the program even without selection.

2 Q. Since you have been taking service from the General Film Company, what has been your experience with respect to obtaining a program, with respect to selecting, or announcing or advertising a program in advance, and having the program on the day set? A. The situation has been very much improved, and during recent years they furnished us a program a week in advance, and very seldom fell short of that program in any way.

Q. Do you advertise your program in advance? A. Yes, sir.

3 Q. Do you ever make any requests of the General Film Company for modification of the program, or for changes in it, so as to get subjects which you think will be more suitable to your audiences? A. Well, in a way. We ask them to change dates on them sometimes. As we take the entire output of the Detroit office, we can only ask them to change dates. Sometimes, however, we have asked for films which they did not buy. They have gone so far as to send out, either to Toledo or Chicago, and get them for us.

Q. Have you found them usually willing to co-operate with you in obtaining a program that is satisfactory? A. Yes, sir.

4 Q. What has been your experience in dealing with licensed and unlicensed exchanges with respect to any competition between licensed and unlicensed producers and exchanges? A. Well, in what way do you mean? I don't exactly get that.

Q. Well, is there a competition between the licensed and unlicensed exchanges to get your business? A. Why, yes, sir. And there are other people that are advertising features. Feature people.

Q. You are already a large patron of unlicensed exchanges? A. Yes, sir. 1

Q. Prior to the time that you became such a large patron, were you frequently solicited by representatives of the unlicensed exchanges? A. Occasionally, yes, sir.

Q. And did they offer you a complete program for your houses, and stated they would give you a complete service? A. They claimed they could furnish it, yes, sir.

Q. Going back to the time when you were taking a licensed service, prior to the advent of the General Film Company in your field, and comparing the prices you were paying for service then with the prices you are paying now, what do you say as to whether the price is larger or smaller than it was before? A. Much smaller. 2

Q. Will you give us some illustration showing just how the price is smaller? A. Well, when I first started in the business, for 4 reels per week I paid \$40.00. At the present time, for—well, we have no house where we get service for \$40.00, but for \$60.00 we get 16 reels a week.

Q. What projecting machines do you use? A. We use the Powers and Simplex.

Q. What have you used at various times in the past? A. Nothing except Powers and Simplex. 3

Cross examination by Mr. GROSVENOR:

Q. When you first started with 4 reels, you used to show those reels, six days a week, didn't you? A. We had four changes a week, giving a one-reel show, two days each, except Sunday.

Q. But you showed each reel more than one day? A. Two days, except the one on Sunday.

Q. And these reels you have now you show only one day? A. One day. 4

Q. So that you only rent them for one day? A. Two reels each day. That is, in the same house.

Q. What is the name of this theatre that has 1,087 seats? A. Orpheum.

Q. You do not show many pictures there, do you? A. We show nothing but pictures.

Q. It is the 1,111 seat house that has the mixed program? A. Vaudeville and pictures.

1 Q. What were the independent pictures that you showed last in the Orpheum? A. What were they?

Q. Yes. A. Well, we are showing them right along. We have independent service, and the feature service, the Exclusive Service of the General Film Company, at this time.

Q. What pictures are you showing there today that are independent? A. I could not tell you, sir. I have not been there for several days.

2 Q. Which company are you buying them from? A. Let's see—for the Orpheum we are using special features outside like—we have had Warner's, and some of the World's Special Film Company's, and States Rights.

Q. You do not show in that theatre, the Universal or the Mutual? A. Not at this time. We have. We did during the Summer, and did until recently. We have only had the Exclusive Service in there since about the middle of December. Before that, we had the Mutual program.

Q. You mean only since the middle of December have you had the licensed pictures? A. No, the Exclusive Service. The Licensed Exclusive service.

3 Q. Then before that you only showed the independent pictures? A. We were showing the Mutual Program during the Summer, yes, sir.

Q. Now, what today, are you showing in that theatre, do you know? A. I don't know. We have the Exclusive Service, and other pictures besides.

Q. You cannot name any independent pictures you are showing there today? A. No, sir.

Q. That theatre is practically a licensed theatre, isn't it? A. Well, we buy the twelve reels a week. Exclusive Service.

4 Q. From the General Film Company? A. Yes, sir.

Q. How much do you buy from the independents today for that theatre? A. Some weeks four, some weeks eight reels, as the case may be.

Q. But you are buying right along twelve reels per week from the Exclusive Department of the General Film Company? A. Yes, sir.

Q. And then for this week, you have about twelve—
A. No, I did not say for this week. Various weeks; we have from four to eight reels of special features outside that we put in that house.

Q. For this week, you have bought from the Exclusive Service Department of the General Film Company, twelve reels? A. That is our regular service every week for that house.

Q. How many independent reels have you bought this week for that theatre? A. Well, I cannot tell you, this week.

Q. Have you bought any? A. Well, I left there. I don't know what he has—the manager attends to that. For this week, I could not tell you.

Q. But you do know that for this week he is using twelve reels from the General Film Company? A. Yes, sir; that is a standing order every week.

Q. Isn't it a fact that that theatre of 1,087 seats is really a licensed theatre? A. No, sir, it is not. We are paying some weeks more for the outside service than we are paying for the licensed service; for instance, two weeks ago our film service there in one week was \$300.00. We paid for the Exclusive Service, \$100.00 a week. We paid that week \$200.00 for outside service—outside service.

Q. It was a special feature, wasn't it? A. Yes, sir.

Q. What is the feature? A. Well, we had "The Last Days of Pompeii," and we had "Kid Canfield, the Reformed Gambler." I think those were the two in that particular week. Our film service in that house will run \$200.00 to \$240.00 per week. The \$100.00 regular is for the 12 reels. The balance we use in picking up outside features.

GLENN A. CROSS, the next witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposes as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Cross? A. Battle Creek, Michigan.

Q. How long have you been living in Battle Creek? A. I have been in business for myself about four years, and was manager of a theatre there about two years and a half previous to that.

Q. Have you been in the motion picture exhibition business in Battle Creek? A. Yes, sir.

1 Q. Is your present theatre a motion picture theatre? A. It is, sir.

Q. And was the one which you managed prior to that, a motion picture theatre? A. It was.

Q. Do you own and operate more than one motion picture theatre now? A. I do.

Q. How many? A. Three.

Q. Will you give us the names, and the seating capacity of each? A. Queen Theatre, 216; Rex Theatre, 264; Garden Theatre, nearly 600.

2 Q. What service do you use in the Queen Theatre? A. Universal.

Q. What service do you use in the Rex Theatre? A. Universal and licensed.

Q. What service do you use in the Garden Theatre? A. Licensed.

Q. Do you know how many theatres there are in Battle Creek? A. You mean exclusive picture theatres?

Q. Yes, I mean motion picture houses? A. There are three others besides my own.

3 Q. Can you give us the names of those, their seating capacities, and the kind of service they use? A. Idle Hour, about 150; Dreamland—pardon me, it is now called the People's Theatre, about, nearly 200; Majestic, 200.

Q. What service does the Idle Hour use? A. Universal.

Q. What service does the People's Theatre use? A. They are at present using the Exclusive Licensed Service part of the time, and part of the time outside features. The Majestic is using the Mutual service.

Q. For how long a time have you been operating the Garden Theatre? A. About three months.

4 Q. What is the name of the theatre that you operated as the agent for another? A. The Queen Theatre.

Q. Is that the same Queen Theatre that you now own? A. Yes, sir.

Q. Has the Queen Theatre at any time used licensed service? A. Yes, sir.

Q. At what time did you use licensed service in the Queen Theatre? A. We used licensed service in the Queen Theatre from the time I took it.

Q. What year was that? A. That was in 1910.

Q. Yes. A. I used licensed service up until the Garden Theatre was opened about three months ago.

Q. Had the Queen Theatre taken licensed service from a licensed rental exchange other than the General Film Company at any time? A. Yes, sir. 1

Q. What licensed rental exchange was it? A. From the Theatre Film Service of Chicago, and National Film Exchange, Detroit; and Vaudette Film Exchange of Grand Rapids.

Q. During the time that you were taking service for the Queen Theatre from any one of these three exchanges you have mentioned, did you find it possible to determine upon, announce and advertise a definite program in advance? A. No, sir. 2

Q. Will you tell us why it was that you could not do that? A. Well, the main reason was—at one particular time we were taking from the Vaudette at Grand Rapids, and there seemed to be contention or personal feeling somewhere, and the Detroit National went so far as to pay the baggage-man on a fast train out of Detroit, money in order to carry their films, and get them there a few hours ahead of what we could get them there, thereby spoiling our day's business.

Q. In what way did he spoil your program? By showing the same pictures, or showing the pictures in advance? A. By showing the same pictures, and pictures in advance. 3

Q. And did this occur frequently or infrequently? A. Very frequently.

Q. Did you ever try to arrange to have a program in advance during the time you were taking from any of these three rental exchanges? A. Yes.

Q. What was the result of your attempt to arrange a program? A. Well, usually it was very unsatisfactory. We became discouraged in trying to do that, because you would expend usually perhaps \$15.00 or \$20.00 or \$25.00 in advertising a certain film, and they would fall down on it. And there you have spent your money in advertising, and lost your film. 4

Q. And couldn't give the performance at the time— A. Couldn't give the show at the time you were supposed to.

Q. From what rental exchange were you taking a licensed service just before you began to take service from the General Film Company? A. From the National—Vaudette, Detroit.

Q. After you began taking service from the General Film

1 Company, did you find it possible to advertise a program in advance? A. Yes, sir.

Q. What was your experience with respect to this question of program after you began taking service from the General Film Company? A. I now advertise some of my program as far as a month in advance. The General Film Company at the Detroit branch have what is known as the schedule booking of a film or films. I take a current magazine, say the Motion Picture World, and from their list, if I can find the release date of that film, I can tell the exact date when I will receive that film.

2 Q. And do you base your advertising accordingly? A. I base my advertising accordingly, yes, sir.

Q. During the period you have been in the moving picture exhibition business, have you been familiar with the prices of complete programs to theatres? A. I have, sir.

3 Q. How do the prices of complete programs to theatres which were charged in 1909 and 1910, compare with the prices for complete programs now charged by the General Film Company? A. Personally I see very little difference when you take in consideration the number of reels and the length of time that you use the reels. I was using at that time 14 reels, and was paying \$45.00 and \$50.00 for them. At the present time, I am using 21 reels, and paying 65.00 and \$70.00.

Q. How do the prices of complete programs quoted you by the independent exchanges compare with the prices for complete programs quoted you by the licensed exchanges? A. Exactly the same, except there will be an increase in my price of \$5.00 in the Universal service; that is, starting the 1st of April, I will pay \$75.00 for a Universal, 21 reels, and \$70.00 for the General.

4 Q. Do the independent exchanges supply you with a complete program for a theatre? A. They do, once a week.

Q. Do you ever make requests of the General Film Company for changes in your program, or for certain motion pictures that you deem desirable? A. Frequently.

Q. Do they grant these requests? A. Yes, sir.

Q. Do you find the General Film Company willing to cooperate with you in arranging a satisfactory program? A. Always, sir.

Q. What projecting machines do you use in your houses? 1

A. I now use Powers.

Q. What have you used? A. Motiograph.

Cross examination by Mr. GROSVENOR:

Q. Is the Garden Theatre the largest theatre in Battle Creek? A. Yes, sir.

Q. And that is the new theatre? A. Yes, sir.

Q. And there you use the licensed service? A. I do not use licensed service there exclusively. Into the town, I get ten reels per day, 6 reels licensed, and 4 reels Universal. They are balanced and booked according to the subjects. I may have on at the Garden Theatre, 2 reels Universal, and 2 reels General. Or, I might have on at the Garden Theatre, 4 reels Universal, which happened one day last week, if I remember rightly; 4 reels of the Universal service. I don't have any distinction between the licensed or unlicensed reels. I simply book and balance the programs. 2

Q. Well, then, you show some of the licensed pictures at the Queen Theatre? A. Yes, sir.

Q. What did you mean by stating on direct examination that when the Garden Theatre was opened, you transferred your licensed service to the Garden Theatre from the Queen, and put in the Universal service at the Queen? A. I did not say that I transferred that. 3

Q. You described the Queen Theatre on your direct examination as a theatre which was supplied by the Universal service? A. Yes, sir.

Q. Then, as a matter of fact, you show licensed pictures there too, don't you? A. I do, sir. The Queen Theatre pays for the unlicensed service. The Garden Theatre pays for the licensed service. The Rex Theatre pays for both licensed and unlicensed service. 4

Q. How long have you been combining the independent and the licensed service in a theatre? A. Well, for about six months.

Q. And before that you showed licensed service exclusively? A. Not exclusively. I have shown several State Right Features, and features of that kind from Feature Film Exchanges.

- 1 Thereupon EDWIN M. SIMONS, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed:

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. Adrian, Michigan.

Q. How long have you lived there? A. About eleven years.

Q. In what business are you engaged? A. The theatrical business, moving pictures.

- 2 Q. How many motion picture theatres are you interested in in Adrian? A. At the present time, only one.

Q. Have you been interested in other theatres in that town? A. At one time I had control of two.

Q. What is the name of the theatre you are now operating? A. The New Family Theatre.

Q. What is the seating capacity of the New Family Theatre? A. 328.

Q. What theatre did you have before you had the New Family Theatre? A. The Family Theatre.

- 3 Q. What was the seating capacity of the Family Theatre? A. One hundred and fifty-eight.

Q. Is the New Family Theatre an enlargement of the Family Theatre? A. No, it is an entirely new theatre.

Q. How many motion picture houses are there in Adrian at this time? A. At the present time, four.

Q. Will you give us the names of them, the seating capacities, and state whether they use the licensed or unlicensed service? A. The Star Theatre uses the unlicensed service.

- 4 Q. What is the seating capacity? A. About one hundred and eighty. I can't tell exactly. The Maple City, one hundred and fifty-six seats. It uses the licensed program, and the Crescent Theatre, one hundred and fifty seats, and it uses the Universal program.

Q. And then comes the New Family Theatre? A. Of 328 seats, using the licensed program.

Q. How long have you had the New Family Theatre? A. Two years the 17th of this coming March.

Q. How long did you operate the Family Theatre before that? A. Just three years.

Q. What service did you use in the Family Theatre? A. I used the service—when I first opened up, do you mean? 1

Q. Yes. A. From the National Vaudette Film Company.

Q. That was the licensed service? A. Yes, sir.

Q. How long did you take service from the National Vaudette Film Company? A. Over a year and a half.

Q. And after that from what exchange? A. The General Film Company.

Q. During the time that you were taking service from the National Vaudette Film Company, did you find it possible to select, announce and advertise a program in advance? A. Not with any success. 2

Q. Did you make any attempt to do so? A. Yes, sir, several times.

Q. Tell us something about your experience in that respect? A. On one occasion I advertised "The Road to Richmond." There was a convention in the city at that time, or rather a reunion between the old soldiers and sailors, and I invited them to come and see that picture in the theatre, and on the occasion of advertising this picture—in fact, I was informed two days previous to getting this film that it would cost me five dollars extra, and I told them that would be all right, to let it come along, and I didn't receive the film until too late to entertain the people there in the afternoon. Another occasion was "The Tale of Two Cities." I had the co-operation of the principal of the city schools, the pupils of the schools were reading the story at that time, of the high school, and boosted it, and advertised it, and they encouraged the students to see it, because it was worthy of their seeing it, and it was released on three different dates, three different release dates, and I ordered this from the National Vaudette in one complete entertainment. In other words, to give it in one day, and my opposition at that time had gotten into communication with his film exchange, and had run the film on separate days, one reel at a time, so when I got it he had taken advantage of my advertisement, and ruined the possibilities of my getting any value out of it. 3 4

Q. Did you have other similar experiences? A. Quite a few.

Q. During the period you were taking service from the

1 National Vaudeette Film Exchange, were you ever able to arrange a program in advance and announce it— A. And not announce it, no.

Q. After you began taking service from the General Film Company, was there any change in respect to the possibility of announcing a program with certainty and being able to produce it on the day fixed? A. I think on very few occasions have they ever failed to deliver our program.

2 Q. What is your practice now with respect to announcing, or advertising your program? A. I advertise daily, and on Saturday I announce a program for the week to come.

Q. Are you able to deliver that program as announced? A. Yes, sir.

Q. Do you ever make requests of the General Film Company for changes in subjects or reels? A. Yes, sir, just last week.

Q. Do you find that the General Film Company will co-operate with you in making these changes? A. Yes, sir.

3 Q. Do you find that the General Film Company will co-operate with you in endeavoring to arrange the program to your satisfaction? A. If it is possible for them to do so, they are always willing to do it.

Q. During the period that you have been in the motion picture exhibiting business have you been familiar with the quality and the merit of the motion pictures produced by the various manufacturers throughout the country? A. I have.

4 Q. Have you paid any attention to the work of the licensed producers of motion pictures with respect to whether their product has improved or deteriorated in the past few years? A. It has improved.

Q. You think it has improved? A. Yes, sir.

Q. And during the same period have you been conversant with the prices of the so-called motion picture service? A. Yes, sir, to theatres, I have.

Q. How does the price that you are now paying for service compare with the price that you were paying in 1909 and 1910? A. In 1909 and 1910, I was paying thirty-five to forty dollars a week.

Q. Will you tell us how many reels you had then? A. 1
I had six reels of pictures a week.

Q. Six reels a week? A. Yes, sir, and I was paying
thirty-five to forty dollars for those six reels per week,
and at the present I am running twenty-four reels of pic-
tures per week and my price of service is sixty dollars.

Q. Are you solicited from time to time by representatives
of the unlicensed exchanges? A. Yes, sir.

Q. Do they make you any inducements in the way of
service or programs, and in the way of prices, to change? A.
They all have their flattering offers, but I tried it on one or
two occasions, and found they could not live up to it. 2

Q. Do you run any unlicensed pictures in your house?
A. Yes, sir.

Q. Do you find that the licensed producers of motion
pictures are competing with one another with respect to
obtaining the good will of the exhibitors? A. Their com-
petition is very keen.

Q. In what respect is it shown? A. Why, in the various
trade journals they are advertising very extensively, and they
are sending circulars through the mail to each individual
business, or theatre, asking him for his business, or asking 3
him to demand their program, or particular make of manu-
factured product.

Q. What projecting machine do you use in your theatre?
A. Powers.

Q. Did you always use a Powers? A. I have used an
Edison.

Q. Those two machines embrace all that you have ever
used? A. I used a Standard machine for a while.

Cross examination by Mr. GROSVENOR:

Q. How long have you been showing from time to time 4
independent pictures in your theatre? A. Well, I have never
shown them until, oh, for during the last six months I have
shown the independent pictures.

Q. When did you last show an independent picture? A.
A week ago last Friday.

Q. Before this period beginning six months ago you
showed only the licensed pictures in your theatre? A. Yes,
sir, at that time.

- 1 Thereupon, JOHN F. HENNEGAN, the next witness produced by defendants of lawful age, being first duly sworn by the Examiner, deposed:

Direct examination by Mr. KINGSLEY:

Q. Where do you live Mr. Hennegan? A. Cincinnati, Ohio.

- Q. How long have you been a resident of Cincinnati, Ohio? A. Ever since the day I was born there, fifty-eight
2 years ago.

Q. Mr. Hennegan, what is your business at the present time? A. Well, we are in the printing business. Hennegan & Company is the name of the firm, and we have been in the printing business for thirty years.

Q. Were you ever a motion picture exhibitor? A. Yes, sir.

Q. Did you own a theatre? A. Yes, sir.

Q. Where was this theatre located? A. Well, we operate a theatre now.

- Q. Where is it located? A. The Lubin Theatre, at 143
3 West Fifth Street, Cincinnati.

Q. How long have you operated the Lubin Theatre? A. Well, since the day it opened, that is, about four and a half years ago.

Q. Were you at one time the owner of an exchange business, a rental exchange business? A. Yes, sir. My brother and I owned the Magnetic Film Exchange in Cincinnati.

Q. When did you buy the Magnetic Film Exchange? A. Well, the best that I can recall at the present time, it was in the early part of 1909.

Q. Do you recall what you paid for it? A. Yes, sir.

- Q. How much was it? A. Ten thousand dollars.
4

Q. How long did you run the Magnetic Film Exchange? A. About one and a half years.

Q. From whom did you buy the Magnetic Film Exchange? A. I bought it of Mr. Seigmund Lubin, of Philadelphia.

Q. Did it have the name of the Magnetic Film Exchange when you bought it? A. No, sir.

Q. What was it called when you bought it? A. The Lubin Film Exchange.

Q. Did you change the name after you bought it? A. Yes, sir, immediately.

Q. At the time you bought the Lubin Film Exchange were you then operating a theatre? A. Yes, sir. 1

Q. Is that the same theatre to which you have just referred? A. Yes, sir.

MR. GROSVENOR: Did you buy that from Mr. Lubin too.

The Witness: The theatre?

MR. GROSVENOR: Yes.

The Witness: We bought that theatre eventually from the Moving Picture Company of America, who controls a circuit of moving picture theatres. Mr. Lubin, and I, and my brother started it originally. This Moving Picture Company of America bought out Mr. Lubin's various interests in the moving picture business as far as the exhibition end was concerned, and we were in partnership, or it was a corporation that they had for about a year and a half, and then we bought them out. So that at the present time my brother and I are the sole owners of the Lubin Theatre. We didn't buy it from Mr. Lubin, but bought it from the Moving Picture Company of America. 2

By MR. KINGSLEY: 3

Q. In what year did you buy the Lubin Film Exchange? A. In 1909.

Q. Do you recall what part of the year it was in? A. I have an idea that it was in either May or June, somewhere thereabouts.

Q. Did you take out a license from the Patents Company after you purchased the exchange? A. Yes, sir.

Q. Did you take out the license voluntarily with the Patents Company? A. Yes, certainly that was so. 4

Q. When you signed the license agreement with the Patents Company, did you intend to live up to its terms? A. Why, certainly.

Q. And did you live up to its terms? A. Yes, sir.

Q. Did anyone give you to understand when you signed it that its terms were not binding and would not be enforced? A. No.

Q. Do you recall that in the license agreement with the Patents Company there was a provision that each rental

1 exchange should rent at least twenty-five hundred dollars' worth of film per month? A. Yes, sir, I remember such a clause.

Q. Did you object to that clause? A. No, not at all.

Q. How many reels of film per week, or month, did you take at that time? A. We took some weeks almost enough to cover that amount. I feel pretty sure our purchases of film ran between a thousand and two thousand dollars per week.

2 Q. Do you recall that in the license agreement of the Patents Company there was a provision for the return of motion pictures after they had been in use for six months? A. Yes, sir.

Q. Did you object to that provision? A. No, sir, not at all, I was glad of it.

Q. Did you regard it as desirable or undesirable? A. I regarded it as quite an advantage. It was a good way of getting rid of junk.

3 Q. Do you recall that in 1909 the Patents Company was collecting royalties from the exhibitors direct, and that subsequently the exchanges were required to collect or were permitted to collect the royalties from the exhibitors? A. Yes, sir.

Q. When you took over the Lubin Film Exchange, was the Patents Company collecting direct from the exhibitors, or were the exchanges collecting from the exhibitors? A. I couldn't really answer that question, but to the best of my knowledge the exchanges were taking care of these license fees.

4 Q. Was the Lubin Film Exchange Company making money when you bought it? A. No, sir, it was not. Oh, excuse me, I thought you said when we dropped it. Yes, it was making some money, I should judge, when we bought it, not a great deal, but some money.

Q. Did the Magnetic Film Exchange under your management make any money? A. No, it was a case of going from bad to worse on account of fierce competition. The Pittsburgh Calcium Light Company and the Magnetic were the two exchanges in Cincinnati that handled the licensed film, and there was an awful struggle and battle for customers, and we would have a customer one week, and the Pittsburgh people would have it the next, and finally the conditions just got to be woeful. I don't believe that either exchange

was making money towards the latter part there, and when the opportunity came up for disposing of it I was one of the happiest men in Cincinnati. 1

Q. With whom did you negotiate the sale of the Magnetic Film Exchange? A. With Mr. J. J. Kennedy, personally.

Q. Did you go to New York? A. Yes, sir, personally, and had a personal interview with him.

Q. Did you have any prolonged negotiations with Mr. Kennedy? A. No, I told him that we were anxious to dispose of the exchange, if everything was satisfactory, and he went over the matter with me, and then made me the proposition. 2

Q. Did you accept that proposition? A. Well, it was so magnanimous that I was startled for a moment, and I got him to go over the figures again and write them down to make sure there was no mistake about it.

Q. What did he pay you for the Magnetic Film Exchange? A. He paid in the neighborhood of thirty-two thousand dollars.

Q. How long had you had it? A. About a year and a half. 3

Q. Had you made any profit during the whole year and a half? A. Well, I should say there were no actual profits made. There probably might have been a few thousand dollars, but considering the amount of money invested in it I would not call that any profit.

Q. Did you charge in any salary to the exchange for your own services? A. No.

Q. Did you give considerable time to it? A. My brother gave more time to it.

Q. Had you charged anything to the exchange for his services? A. Not a penny. 4

Q. What arrangements were made for paying you for the exchange by the General Film Company, acting through Mr. Kennedy? A. Well, it is a contract of agreement, which I regard almost the same as notes, and at specified times, that is, four times every year, there is a payment made with six per cent. interest.

Q. How many payments were there, altogether? A. It might possibly be five per cent., but I am pretty sure it was six per cent.

1 Q. Have you any memorandum to refresh your mind?
A. Yes, I can show it to you if you wish.

Q. You might look at it, if you wish? A. I don't see where it is, this amount. I am pretty sure it is six per cent. though.

Mr. GROSVENOR: What are those papers?

The Witness: Those papers are to confirm the sale of the Magnetic Film Exchange to the General Film Com-
2 pany.

Mr. GROSVENOR: That is, these are the papers that were executed at the date of the sale?

The Witness: Yes, sir.

By Mr. KINGSLEY:

Q. Was a part of the purchase price to be in stock? A. Yes, sir.

Q. What sum in stock? A. Eight thousand dollars.

3 Q. What dividend did that stock bear? A. Seven per cent.

Q. Has the stock been delivered to you? A. I am pretty sure I have got that stock in our safe in Cincinnati.

Q. Have you received the dividends on the stock since then? A. Regularly, yes, sir.

Q. What sum was to be paid in deferred cash payments?
A. You mean on the original transaction?

Q. Yes? A. Well, the cash payments—

4 Q. What was the total? A. There is a schedule of the payments there, but Mr. Kennedy—we were putting up a printing factory at that time, and we needed a little cash, and he gave me one year's in advance of the regular instalments.

Q. Were these regular instalments to be eleven hundred dollars every three months? A. Yes, sir.

Q. During the life of the contract? A. Yes, sir, for five years.

Q. And did they bear interest at five per cent.? A. Yes, sir.

Q. Have these instalments been paid upon their ma-

turity? A. Promptly, and generally before maturity, one day before. 1

Q. How many instalments now remain unpaid and undue? A. There are six instalments due.

Q. Do you mean due, or to become due? A. Not paid. I did not mean due. I mean not paid.

Q. During the time that you were operating the Magnetic Film Exchange you were interested in a theatre, were you not? A. Yes, sir.

Q. Do you regard it as a good thing for the owner of an exchange to be also the owner of a theatre? 2

Mr. GROSVENOR: I object to that as immaterial, and calling for the conclusion of the witness.

The Witness: No, I do not.

By Mr. KINGSLEY:

Q. Did you, as the proprietor of the exchange and manager of the exchange, favor your theatre in any service during that period? A. Well, naturally that would be human nature to do that. 3

Q. But did you do it, or did you overcome your natural impulse to do so? A. We paid for our service, we charged the service up, the theatre with the service, on an account at full value.

Q. If there was any choice between your theatre and another theatre, which one had the preference? A. Ours, surely, all the time, as long as I would have had anything to say about it.

Q. During the time you have been operating a theatre as an exhibitor have you ever used the unlicensed service? A. Yes, sir. 4

Q. Have you used it for any considerable time, or from time to time? A. No, we didn't take that up until the Famous Players came there with their productions, and we regarded their pictures as very fine, and we put them on and run them one whole week. However, I did not dispense with the General Film service in doing that. Last week we run a Famous Players' production, "The Daughter of the Hills," and we run with it a licensed exclusive pic-

1 ture, "Wild Animals at Large," and a Comedy reel, "In Time for Work."

Q. Do you have any competitors in your immediate neighborhood? A. Yes, sir; three, right next door.

Q. What is the seating capacity of your theatre? A. Three hundred.

Q. What service is used by your competitors? A. One uses the Universal, and one the Mutual, and the other the General.

2 Q. What is the seating capacity of the other respective houses? A. They all run about 300.

Q. Have you at any time, as an exhibitor, had difficulty in keeping your programs clear? A. We had no difficulty at all in keeping it clear with the General service.

Q. Did you use to have any difficulty? A. Well, we never ran anything but General service. We never had any difficulty.

3 Q. How do the prices for the program you are now using in the Lubin Theatre compare with the prices you were paying in 1909? A. Well, the prices are considerably less, and the pictures far superior—no comparison whatever. There has been such a vast improvement. We paid for our service \$150.00 a week originally, and now it averages with the General Film Company, when we run their pictures, about \$100.00 a week.

Q. How many reels did you use in 1909? A. Well, we ran 2 reels. Very seldom that we ran 3.

Q. How many reels do you use now? A. Three reels when we run General Film service, but when we run features, like we are running, "Caprice" this week, there are 5 reels in that. It is a special picture.

4 Cross examination by Mr. GROSVENOR:

Q. You sold out this Magnetic Film Company in 1910, to the General Film Company? A. In November, 1910, I think it is. The exact time.

Q. How did you happen to sell? A. Well, I heard that the General Film Company had taken over—well, previous to that, I had seen an article in the Moving Picture World, I think it was, about an organization known as the General Film Company.

Q. You knew that the General Film Company had prior

to November, 1910, acquired a large number of rental exchanges in the country? A. Yes, previous to that time, only very previous. Not for any great length of time before that did I know it. 1

Q. That is, the General Film Company went into business in about April or May, 1910? A. Yes—I don't know. I say yes, but I don't know.

Q. Well, in any event, you know that they had been in business a few months prior to your selling out to them? A. Yes, probably.

Q. And that in those few months they had acquired quite a large number of exchanges? A. No, I did not know that they had acquired any except the Pittsburgh Calcium Light, and I did not know that of a fact. I surmised so. 2

Q. You read about it? A. I read about it or heard of it.

Q. You said on direct examination you went to New York to see Mr. Kennedy. Did Mr. Kennedy write you to come, or did somebody else write you to come, or did you go voluntarily? A. I went voluntarily.

Q. Did you have an appointment before you went? A. No, sir; I went to the General Film Company office, and met Mr. Waters there, the manager, and told him I wanted to see Mr. Kennedy, and I think it was the next day before the appointment was made. 3

Whereupon, at 4:15 P. M., January 6, 1914, adjournment taken until Wednesday, January 7, 1914, 11 A. M., at Hotel Statler, Cleveland, Ohio.

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IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;"> UNITED STATES OF AMERICA, Petitioner, <i>v.</i> MOTION PICTURE PATENTS CO. and others, Defendants. </div> <div style="font-size: 4em; line-height: 1; margin-left: 10px;"> { </div> </div>	No. 889. Sept. Sess., 1912.
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CLEVELAND, OHIO, January 7, 1914.

By consent of counsel the hearings were adjourned until eleven o'clock A. M., January 8, 1914, to be resumed at Hotel La Salle, Chicago, Illinois.

3

CHICAGO, ILLINOIS, January 8, 1914.

The hearings were resumed pursuant to adjournment at 11 o'clock A. M., January 8, 1914, at Hotel La Salle, Chicago, Illinois.

4

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

Present also, JOSEPH R. DARLING, Esq., Special Agent.

CHARLES F. KINGSLEY, Esq., appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

Thereupon, FRANK COOK, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Cook? A. Milwaukee.

Q. How long have you lived in Milwaukee? A. Eighteen or twenty years.

Q. In what business are you engaged? A. In the moving picture business.

Q. How long have you been in the moving picture business in Milwaukee? A. About twelve years.

Q. Do you own or operate a theatre at the present time? A. No.

Q. Did you ever own or operate a theatre in Milwaukee? A. I do not own any theatre, but I am operating several for the Saxe Amusement Enterprises.

Q. How many motion picture theatres do you manage for the Saxe Amusement Enterprises? A. Five exclusive motion picture houses.

Q. Are these five exclusive motion picture houses licensed houses? A. All are licensed.

Q. Will you tell us Mr. Cook the names of these houses, and their seating capacities? A. The Princess, 1200; the Alhambra, 3,000. I always say the Princess first because that is my house. The Theatorium, 400, the Modjeska, that is 1,000, and the Juneau, about 1200.

Q. Were you operating motion picture houses or motion picture theatres in Milwaukee in 1909 and 1910? A. Yes, sir.

Q. From what rental exchange are you securing motion picture programs for the various houses to which you have referred? A. Through the Milwaukee branch of the General Film Company, assisted by the Chicago branch.

Q. From what rental exchange did you obtain service for the house or houses you were operating in Milwaukee before the General Film Company began to do business in that field? A. From Spoor of Chicago.

Q. At the time you were obtaining service from Spoor, of Chicago, did you find it possible to advertise a certain definite fixed program in advance, and to produce that program on the date designated in your advertisement? A. No, sir.

1 Q. Did you find it possible to advertise it in advance? A. No, sir.

Q. Will you tell us why you could not advertise your program in advance at that time? A. Well, we might get the pictures and we might not.

Q. What was your experience as to whether you might get them? A. Well, we would not take any chances.

Q. Did you find that the chance was sufficiently serious so that it made it impossible to advertise in advance? A. Yes, sir, until we got the picture we could not advertise.

2 Q. At that time did you experience any difficulty in keeping your programs clear from your competitor's programs? A. No chance.

Q. Sir? A. There was no chance to keep your program clear, you couldn't keep clear. No, it was a battle all the time.

Q. Did you have any experience at that time in announcing a program or announcing a certain subject in advance, and perhaps advertising it to some extent, only to find that your competitor was permitted to show that program or subject a little bit ahead of time? A. Yes, sir.

3 Q. Did you have that experience? A. Yes, sir.

Q. Did it happen frequently or infrequently? A. Quite frequently.

Q. Did you continue to take service from Spoor at Chicago until the General Film Company entered your field? A. Yes, sir.

Q. Did you then begin to take service from the General Film Company? A. Yes, sir.

4 Q. And after you began taking service from the General Film Company for the theatres you were then operating, did you find it possible to select a program in advance, to advertise the same, and to show that program on the date designated? A. That was the original object of Mr. Frauler, to give us that opportunity.

Q. Who was Mr. Frauler? A. He was the representative of the General Film Company in Milwaukee at the time.

Q. Did he carry out what you say was his object? A. He did.

Q. What is the situation now with respect to obtaining a program in advance and being able to advertise it? A. We do business on a legitimate basis, advertising not like a moving picture show, but a legitimate theatre. We have two

weeks in advance, secure our paper, advertising and press matter and carry on our business through the efforts of the General Film Company, like a legitimate theatre.

Q. Do you find that by taking service from two exchanges, one at Milwaukee, and one at Chicago, you are able to keep your programs clear in Milwaukee? A. Yes, sir.

Q. Do the General Film Company's exchanges co-operate with you in your attempt to keep your programs clear? A. Most assuredly, yes.

Q. Do you ever make special requests of the General Film Company for changes in your programs for certain subjects or reels which you deem desirable? A. I do.

Q. Do you find that they are willing to co-operate with you? A. Yes, sir, always.

Q. Do they grant your requests? A. Yes, sir.

Q. Did you have any experience before the General Film Company entered your field of exchanges making promises to the exhibitors which they did not keep? A. We used to set up all night waiting to get a program for the next day.

Q. Do you mean that literally, that you would sit up all night or that you— A. We would stay there until we got a program.

Q. And that would mean several hours sometimes? A. Yes, sir.

Q. Now, in getting programs under these conditions would you get the kind of program you wanted? A. Nothing like what we get now.

Q. Are you familiar with the motion picture situation in Milwaukee at the present time? A. Yes, sir.

Q. How many unlicensed houses are there in Milwaukee? A. There are about fifty-three all told, and I think it is about an even break.

Q. You think it is about an even break? A. Yes, sir.

Q. Are there any large houses in Milwaukee which are showing unlicensed motion pictures? A. Mr. Frauler's house the Butterfly.

Q. What is the seating capacity of the Butterfly Theatre? A. About 1200.

Q. Are you yourself, or is the Saxe Amusement Enterprise operating any house which is showing the unlicensed pictures? A. No, sir.

Q. Do you show any unlicensed pictures at any time in any of your theatres? A. No, sir.

1 Q. In the way of special subjects or otherwise? A. Well, pardon me. Would you consider the Famous Players a licensed or unlicensed—

Q. That is unlicensed? A. We show the Famous Players. At the same time they are sanctioned, I think, are they not?

2 Q. Mr. Cook, during the period you have been in the motion picture business have you been familiar with the prices charged to exhibitors by exchanges, with the kinds of programs the exhibitors have used, and with the changes in the requirements of the business which have occurred from time to time as the public interest has increased in motion pictures? A. Yes, sir.

Q. Are the prices which you are now paying for your programs as large or larger than the prices you paid for a program in 1909 and 1910? A. The prices are a little higher graduated according to the increasing quality.

Q. How did the prices paid in 1909 and early in 1910 compare with the prices paid now with respect to quantity, and by that I mean the number of films and the release dates? A. We always had a limit to our program.

3 Q. Which theatre have you operated the longest in Milwaukee? A. Well, the Theatorium was the original theatre.

Q. What particular program did you use in the Theatorium in 1909 and 1910? A. Three reels.

Q. What program are you using in the Theatorium now? A. Four reels.

Q. What price did you pay for the program you were using in the Theatorium in 1909 and 1910; the three-reel program? A. The increased price is about the same *pro rata* per reel as we were paying then.

4 Q. Well, do you know the sum, the aggregate sum? A. We were paying seventy dollars then and I think we are paying ninety dollars now. I don't think I know.

Q. So that a three-reel program in 1909 and 1910 cost you seventy dollars? A. Yes, sir.

Q. And a four-reel program in 1914 costs you ninety dollars? A. Yes, sir.

Q. Have you observed as the manager of motion picture houses whether or not the licensed producers of motion pictures are competing among themselves with respect to obtaining the good will of the exhibitors in the way of better sub-

jects? A. That seems the special aim of the licensed manufacturers. 1

Q. Do they call your attention to subjects which they consider of special merit and urge upon you the desirability of insisting that you get them of your exchange? A. Very liberally with literature, yes, sir.

Q. What projecting machines do you use in your houses? A. The Kinedrome.

Q. The Kinedrome? A. Yes, sir.

Q. Do you use that exclusively? A. Yes, sir, we are supplanting those as fast as they wear out with the Simplex. 2

Q. You mean as fast as you can with the Simplex? A. As fast as they give out.

Q. What did you use prior to using this machine? A. Powers and Edisons.

Q. Do you have any interest in vaudeville amusement? A. Yes, sir.

Q. Do you have theatres which have vaudeville acts? A. Yes, sir.

Q. Do you book your vaudeville acts in advance? A. Yes, sir.

Q. Do you in the theatres devoted exclusively to motion pictures book your programs in advance? A. Yes, sir. 3

Q. The same as you do in your vaudeville house? A. Yes, sir.

Q. Do you use the same care and the same discretion as far as you can in booking that class of business? A. I can book the two vaudeville houses in an hour and a half and it takes me six hours to book my picture theatres.

Q. Is that because you are so careful in selecting your programs? A. Yes, sir.

Q. Or because of physical difficulties? A. No, sir, because I am careful and discreet. 4

Q. In what way do you show care and discretion in selecting them? A. For two hours between Milwaukee and Chicago I make the train my office, and I read fifty-two stories, —if the releases are fifty or fifty-one, I read those stories, and when I walk into the Wabash Branch on 1719 I have those stories in my head. This may be peculiar, and I am peculiar about these things.

Q. Well, that is all right. A. I walk into the Wabash Branch with these stories and open my release sheet, and the first thing I do is to get criticisms from friends who

- 1 have seen the pictures. With these criticisms and my knowledge of the stories I then start to booking, and before I get through at five o'clock I have seen all the pictures, and I have received the criticisms, and then I often make any changes that I wish to.

Q. Mr. Cook, are you solicited from time to time by representatives of independent exchanges? A. Yes, sir.

Q. Do they offer you a complete program? A. Almost anything.

2 Cross examination by Mr. GROSVENOR:

Q. Mr. Cook do you obtain quite a number of your pictures from this Chicago branch of the General Film Company? A. Yes, sir.

Q. They are shipped from Chicago? A. Yes, sir.

Q. Up to your places of business in Milwaukee? A. Yes, sir.

Q. And then you return them from Milwaukee to Chicago when you are through with them? A. I have nothing to do with the shipping or returning. That is done through the Milwaukee branch.

- 3 Q. Of the General Film Company? A. Yes, sir.

Q. Now, are you one of the stockholders of this Saxe Amusement Company? A. No, sir, I am an employe.

Q. Is there any other company, Mr. Cook, in Milwaukee, which has as many large theatres, that is, large moving picture theatres, as the Saxe Amusement Company? A. The Mutual Film Company owns four.

Q. Does the Mutual Film Company own those theatres? A. Mr. John Frauler of the Mutual Film Company owns them—that is a man connected with the Mutual Film Company.

- 4 Q. Are those theatres as large as those five theatres which you operate? A. Omitting the Alhambra, yes.

Q. The Alhambra is one of your theatres and is the largest theatre in Milwaukee showing moving pictures? A. Yes, sir.

Q. Now, prior to the formation of the General Film Company the theatres that you were operating were making money, were they not? A. Yes, we were making money.

Q. There is no competition between these manufactur-

ers, that is, these licensed manufacturers, as to price, is there? A. No, sir. 1

Q. So that you pay the same for the output of each, provided the output is of the same age? A. Yes, sir.

Q. And when you referred on direct examination to competition between these licensed manufacturers, you were, of course, referring to competition as to quality? A. Yes, sir.

Q. But not to competition as to price? A. No, sir, not as to price.

Re-examination by Mr. KINGSLEY: 2

Q. You pay different prices for the programs or pictures at the different theatres? A. Yes, sir.

Q. The different programs which you show at the different theatres have different values for your purposes? A. Well, yes.

Q. And is that difference in value reflected in the price which you pay to the rental exchanges? A. Yes, sir.

ISAAC H. RUBEN, the next witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposes as follows: 3

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. Minneapolis.

Q. How long have you lived there? A. About seven months.

Q. Where did you live prior to that? A. Des Moines, Iowa.

Q. Were you in the motion picture business in Des Moines? A. Yes, sir. At the present time. 4

Q. For how long were you in the motion picture business in Des Moines? A. About eight years.

Q. Did you own and operate a theatre there? A. Yes, sir; two of them.

Q. Tell us, please, the names of the theatres, and their seating capacities. A. Star Theatre, seating capacity, 375; Lyric Theatre, about the same capacity.

Q. For about how long a time did you own and operate

1 the Star and Lyric Theatres? A. The Lyric Theatre I have operated for about six years. Six years and a half.

Q. And the Star? A. The Star Theatre about the same length of time.

Q. Are these houses licensed houses? A. Yes, sir.

Q. From what rental exchange do you obtain your motion picture service for these two houses? A. General Film Company.

Q. What branch? A. The Minneapolis branch.

2 Q. How long have you obtained it from that branch? A. Ever since it has come into existence.

3 Q. Prior to that time, from what exchange did you obtain your service? A. Clark & Rowland of Pittsburgh.

Q. That was the Pittsburgh Calcium Light Company? A. Yes, sir; the old Pittsburgh Calcium Light Company.

Q. They had an exchange— A. At Pittsburgh. Then they came and opened one up in Des Moines.

Q. At the time you were obtaining your motion picture service in the Star and Lyric Theatres from the Pittsburgh Calcium Light Exchange at Des Moines, did you find it possible to advertise a program in advance with the certainty that you would be able to show the program on the date designated? A. No.

Q. Well, from the service that you were getting at that time, could you do it? A. Well, it was very uncertain at that time.

Q. In what respect was it uncertain, Mr. Ruben? A. Well, we would put in a request thinking that we were going to get it, and occasionally we were disappointed, stating there was a request previous to our putting in ours.

4 Q. After you began to take service for the Star and Lyric Theatres from the General Film Company, did you find it possible to obtain a definite, fixed program, and to announce it in advance? A. Yes. There was a friendly working agreement at the time that they were formed—there were four exhibitors in Des Moines, and they arranged to satisfy us all, and the working agreement that we made at that time was, for one week, one exhibitor was to have the selection, and the following week, another exhibitor was to have the selection, and so on. That is the agreement that we made at the time the General Film Company opened up their branch in Des Moines.

Q. Did this working agreement permit you to keep your programs clear? A. Yes, sir. 1

Q. And were you satisfied with the way it worked out? A. Perfectly.

Q. How many motion picture houses are there in Des Moines at the present time? A. Well, now, to be frank with you, I am operating very extensively in St. Paul and Minneapolis. I have sold my interests in Des Moines, with the exception of the Star Theatre, and I am not really in a position to say what the conditions are in Des Moines, that is, the number of theatres, etc. I am still taking General Film service there. There is three other licensed houses there, but we do not conflict in any way. 2

Q. Do you know how many unlicensed houses there are in Des Moines at the present time?

Mr. GROSVENOR: I object to this question on the ground the witness has already stated that he was not qualified to testify.

The Witness: Pardon me, I am qualified; but I am not in a position to state as to what the exact conditions are. I am in a position to state how many independent houses there are. 3

Q. How many independent houses are there in Des Moines at the present time? A. Seven or eight.

Q. Can you name them and give the seating capacity of each? A. Yes, sir; approximately.

Q. Will you do so please? A. Yes, sir. Unlicensed houses you have reference to?

Q. Yes, the unlicensed houses? A. There is the Family Theatre, seating capacity, 375; Colonial Theatre, with a seating capacity of 375; Majestic Theatre, with a seating capacity of 1,100, and the Isis Theatre, with a seating capacity of about 900, and the—it has a peculiar name—the Pullman Theatre, with a seating capacity of about 300. 4

Mr. GROSVENOR: How many have you named?

The Witness: Five, I think.

Mr. GROSVENOR: And you said there were seven. What are the names of the other two?

- 1 The Witness: There is ten or twelve. I am just naming the most important ones. I can mention several others in the suburbs, but I am mentioning these right in the heart of the city. Charlie Naymer is operating five independent houses, but I have only named two of his theatres.

By Mr. KINGSLEY:

- Q. You have stated that you are interested in the motion picture theatrical business in other cities? A. St. Paul and Minneapolis.

Q. What are your interests in St. Paul and Minneapolis? A. I have the Majestic Theatre there with a seating capacity of a thousand.

Q. In which town? A. In St. Paul.

Q. Yes. A. I also have the Princess Theatre in St. Paul, with a seating capacity of about 1,300.

Q. And Minneapolis? A. I have the New Grand Theatre in Minneapolis, 1,350.

Q. So you have three theatres in St. Paul and Minneapolis? A. Yes, sir.

- 3 Q. How long have you had the three theatres? A. I have had one of them about four years, and the others about three years.

Q. What service do you run in these three theatres? A. I am running the General Film service, and also the Famous Players in one of them.

Q. And does your testimony with respect to definite programs from the General Film Company apply to the three theatres you have in St. Paul and Minneapolis, as well as to the two theatres that you had in Des Moines? A. Yes, sir.

- 4 Q. Did you ever have any experience in taking service from an exchange where the owner was manager or interested in another theatre? A. The experience that I had previous to the General Film Company taking over the Van Duzee office, which was buying the products now controlled by the General Film Company—it was owned by Mr. Van Duzee. Mr. Van Duzee, at the time we were taking service from him, owned several theatres, one—two of them, in fact—right on the opposite side of the street of one of my theatres. The Alhambra and the Gem. And we were taking service from him and paying him a good

price, and we were told at any time that we wanted feature pictures, why, we could just put in our application and we could get it. And we done so. We made several attempts to do those things, and as a usual thing, we were always met with a disappointment, and in fact, I was not aware of the fact that Mr. Van Duzee was affiliated at that time, and thought it strange that us, coming forward and offering to pay any reasonable price, that we was not able to get that service, and on investigation, we found out that Mr. Van Duzee owned a controlling interest in this theatre, also the Gem, and two or three others, and they were getting the preference on the releases.

Q. When you say that you did not know he was affiliated at that time, you mean by that that you did not know he was affiliated with these theatres, or connected with them? A. In fact, it was not public property that he was affiliated with any theatre at all.

Q. But you subsequently found out he was? A. I found out on investigation; in fact, I had one of his operators and his assistant manager, I employed them, and come to find out how it was that we did not get this service that we went after.

Q. Do you find that the licensed producers of motion pictures are competing with one another with respect to obtaining the favor of the exhibitors, by sending them circulars and advertising matter, and calling attention to the merit of their individual productions? A. Yes, sir; we get circulars from all of them every week.

Q. Do you get circulars and literature urging you to call upon your exchanges for certain works of merit? A. Yes, sir.

Q. Are you solicited from time to time by representatives of the unlicensed exchanges? A. Yes, sir; yes, sir.

Q. Do they offer you inducements in the way of programs or in the way of prices? A. Yes, sir.

Q. During the period that you have been an exhibitor of motion pictures, have you been conversant with the prices of the programs and service? A. Yes, sir.

Q. How do the prices of service at the present time compare with the prices you paid in 1909, and the early part of 1910? A. They are less. We are paying less

I money at the present time for our service than we did previous.

Q. And in saying that, do you take into consideration the number of reels, and the age of the service? A. Yes, sir.

Q. What projecting machines do you use in your establishments? A. I am using at the present time Powers No. 6.

Q. Have you been using that altogether? A. Yes. For the last two or three years. The Improved Powers.

Q. What did you use before you used the Powers machine? A. I used an Edison.

2 Q. The Edison and the Powers, then, comprise all the projecting machines you have ever used? A. Yes, sir; with the No. 5.

Q. Is that the No. 5 Powers or No. 5 Edison? A. That is the No. 5 Powers.

Cross examination by Mr. GROSVENOR:

Q. Mr. Ruben, as I understand, your Des Moines houses were supplied with films from Minneapolis? A. No, sir. They are at the present time.

3 Q. They are today supplied from Minneapolis? A. Yes, sir.

Q. Well, where was this Van Duzee rental exchange? A. In St. Paul.

Q. And when you had this trouble with him in connection with your Des Moines houses, you were being supplied by his exchange from St. Paul? A. I was getting my service for my St. Paul houses from Mr. Van Duzee, but not for Des Moines.

4 Q. Then you had not any trouble of the character which you have described, at your Des Moines houses? A. I was not in business at that time in St. Paul. The service that I referred to in Des Moines, understand, I was taking originally from the Calcium Light Company in Pittsburgh, and after I had branched out in business, why, I was taking my service—that is, when I got up to the north, St. Paul and Minneapolis, the only ones that was handling the licensed pictures at that time—not licensed, I mean, previous to the General Film Company taking them over—that was before the General Film Company had absorbed the Van Duzee exchange.

Q. Where was it that you had this trouble with the Van Duzee Exchange? A. In St. Paul. 1

Q. And when was it? A. When I first went in business. About three years and a half or four years ago.

Q. And when you heard that Van Duzee owned this other theatre, did you change the source of supply, and get the licensed films from some other place? A. Shortly after that, it was absorbed by the General Film Company.

Q. I say, when you heard that Mr. Van Duzee was interested in this theatre, did you change? A. No, sir; we could not, for the reason that the other houses were taking what few independent pictures that there were, that is, the first-run stuff was all absorbed by my competitors taking them, in fact, I was compelled to take whatever this fellow wanted to give me. Whatever the exchange wanted to give me. 2

Q. Couldn't you get pictures, licensed pictures, from Minneapolis? A. No, sir.

Q. Or Chicago? A. No, sir.

Q. Why not? A. I could get them at any exorbitant prices, yes, sir. In fact, I came up here, and seen Mr.—the Kleine people, and the releases I wanted—understand, I wanted to make arrangements in fact that I could get them the same day, and the price was so big that I could not very well handle them. In fact, the first runs were being taken care of here in Chicago. It would have to be a day or two after. I can recall that. Then I would be at just as great a disadvantage as I was. 3

Q. Well, you did not change your exchange then, in any event? A. Beg your pardon?

Q. You did not change it? A. Yes, sir; I made the attempt. I went out and put in other service.

Q. You did not put in other service? A. I did put in other service, but finally went back, with promises and counter promises. 4

Redirect examination by Mr. KINGSLEY:

Q. Did you find that the promises were kept? A. No. Never was kept.

- 1 Thereupon, W. ALLEN KENNEY, the next witness produced by the defendants, of lawful age, being first duly sworn, deposed:

Direct examination by Mr. KINGSLEY:

Q. Where do you reside, Judge? A. Louisville, Kentucky.

Q. How long have you been a resident at Louisville, Kentucky? A. Forty-nine years.

- 2 Q. During that period have you been engaged in the motion picture business in Louisville? A. Yes, sir, I have.

Q. What years were you in the motion picture business? A. From about 1907 or 1908 up to the present time.

Q. At the present do you operate a theatre or own a theatre in Louisville? A. I am an officer in the several corporations that own and operate four houses, three in Louisville, and one out of Louisville.

- 3 Q. Will you tell us the names of the three houses in which you are interested as an officer in the corporations operating them in Louisville, and the one outside, giving the seating capacity of each? A. I am Secretary and Treasurer of the Princess Amusement Company, which owns the Orpheum Theatre, with a seating capacity of about four hundred and thirty. I am the Secretary and Treasurer of the Casino Amusement Company which operates the Casino Theatre, with a seating capacity of about four hundred and thirty. I am the Secretary and Treasurer of the Vaudo Amusement Company which owns and operates the Columbia Theatre with a seating capacity of about two hundred and thirty. I am the President of the Henderson Amusement Company which owns and operates the Princess Theatre in Henderson, Kentucky.

- 4 Q. Were you interested in any way in motion picture theatres in 1909 and 1910? A. I was, in the same capacity that I am today.

Q. What character of service do you use in the four houses you have mentioned, the licensed or the unlicensed? A. At present the licensed in all of them.

Q. Did you use the licensed service in these four houses in 1909 and in the early part of 1910? A. I did in all of those that were in existence at that time.

Q. And from what licensed rental exchange did you

obtain your service at that time? A. Well, we have taken service from the O. T. Crawford Film Exchange of Saint Louis. They had a branch in Louisville, and Carl Laemmle, of Evansville, and Kleine, of Chicago, and I think at one time of the Pittsburgh Calcium Light Company, of Cincinnati.

Q. When you were taking service from these four exchanges you have enumerated did you find it possible to fix upon a definite program for your theatres in advance, to advertise the same, and to show the programs so advertised on the date set? A. We never got our program until the films arrived on the morning they were to be shown.

Q. What was the reason for that? A. Well, I don't know, unless the people that were buying the films didn't know themselves. We were running first run stuff, and we would never know what it was until that morning.

Q. Now, after you began taking service from the General Film Company did you then begin to announce your programs in advance and to advertise them? A. Oh, yes. We have a newspaper, or rather have an employe to do the newspaper work, and we get our programs in for the following week on Thursday, and we know what we are to have each day in advance, and advertise just the same as a theatre would do.

Q. Do your representatives, so far as you know, ever make any requests of the General Film Company for certain reels or for changes of program? A. Yes, sir, we do.

Q. Do you find that the General Film Company co-operates with them? A. Yes, sir, they do whenever it is possible.

Q. Were you at any time interested in any film exchange in any way directly or indirectly? A. Indirectly with the Crawford.

Q. What do you mean by "indirectly?" Did you have some stock in it? A. No, in the Casino Amusement Company, Mr. Crawford was our partner and one of the stockholders and officers of the Casino Amusement Company, and the Casino Amusement Company and the Crawford Exchange were together, and we operated the exchange there in Louisville for him.

Q. Did you find that an advantage for the Casino Amusement Company? A. Very much so.

1 Q. In what respect did it aid the Casino Amusement Company? A. Well, we had the advantage of putting on reels ahead of the people who were running a picture show just beyond us, and if we found out that they were going to put on a certain picture on one day we would put it on ahead of them.

Q. Mr. Crawford had an interest in the Casino Amusement Company? A. Yes, sir, he owned fifty-one per cent. of it.

Q. Was the exchange profitable or unprofitable? A. It lost about fourteen thousand dollars.

2 Q. What happened to the exchange? A. It went out of existence, that part of it. This was only a branch, and it was just consolidated with the main office in Saint Louis.

Q. Where was this branch located, did you say? A. Louisville, on Fourth Street, between Green and Jefferson Streets, over the Casino Theatre.

Q. Are your houses solicited from time to time by representatives of the independent exchanges? A. Oh, yes, there is hardly a week passes but what some independent exchange solicits the business.

3 Q. Do you find that they offer inducements in the way of program or price? A. No, I do not. The prices are about the same.

Q. Have you been familiar with the prices during the period that you have been interested in the motion picture houses? A. I have, as I have paid all the bills.

4 Q. How do the prices you are now paying compare with the prices you paid in 1909 and 1910? A. I will answer that by saying that in 1909 and 1910 we were getting six reels a week, that is three reels to a change, changing twice a week. We are now getting fifteen reels with five changes a week, three reels to a change, and we are paying the same price that we paid for the six reels.

Q. Do you find that the licensed producers of motion pictures are competing with one another with respect to obtaining the good-will and confidence of the exhibitors by sending them circulars, urging upon them the desirability of calling upon their exchanges for certain motion pictures? A. Well, all the manufacturers send out circulars to their patrons in the shape of pamphlets giving the story of the picture and the advantage of getting that picture in your house.

Q. What projecting machines are you using in your houses now? A. We are using the Motiograph, Edison, Powers, Standard and Simplex. 1

Q. Have you used any other type at any time? A. Not that I remember of.

Q. Have you ever had any experience with the independent service? A. Yes, sir.

Q. What was your experience? A. Well, we have used the independent service at two of the houses, the Casino and the Columbia. In fact, we used the independent at the Columbia Theatre up until last Saturday night. 2

Q. How long had you used it altogether at the Columbia Theatre? A. I suppose two years, but possibly there was a short time that we used the General in there within that two years.

Q. What became of the service that you gave up, the independent service? A. That was the Warner features. It was rented to two other houses in a couple of blocks of us.

Q. Were they giving you a complete program, the Warner features? A. Yes, sir.

Q. What is the best independent service that you can obtain in Louisville now, and by that I mean in regard to the release date? A. Well, the Universal averages thirty days, the Mutual third run or fourth run, the Warner, third run. 3

Q. Does that mean that all the earlier runs are booked up? A. Yes, I said the Universal thirty days. Now that is a service that has been run three days old in the first run house, and four days old in the second run house, and a party that would take the third run would have to take it thirty days after the second run.

Q. In other words it is booked up to that time? A. Yes, sir. 4

Cross examination by Mr. GROSVENOR:

Q. Witness, when you took the stand you were greeted by counsel for the defendants as "Judge." Are you a Judge? A. I am a lawyer and served as Judge of the Circuit Court for about three years.

Q. The Circuit Court of Kentucky? A. Yes, sir.

1 Q. Three years ago? A. No, sir, I served on the last service that I gave the State as Judge was during the month of December of last year.

Q. December of 1913? A. Yes, sir.

Q. Then this interest that you have in these three or four motion picture companies, is that a side issue to your judgeship? A. I was Judge—

Q. I say was your judgeship a side issue to the motion picture business?

2 Mr. KINGSLEY: I object to that as incompetent, immaterial and irrelevant.

Mr. GROSVENOR: The question is competent as examining into the competency of this witness to testify at length as to the motion picture business.

Mr. KINGSLEY: It has no competency whatever.

3 The Witness: I will answer that. I was an active practitioner up to about two or three years ago. Then I got into this picture business with an investment, and I got interested in the picture show business, and found it profitable, and now while I am still practicing law, and have an office and a partner I attend to very little law business as my interests are very great in the picture show business, and it is necessary for me to look after it as the partner that I had has left Louisville.

By Mr. GROSVENOR:

Q. Your principal business to-day is the motion picture business? A. Yes, sir.

4 Q. There is no competition between these different manufacturers who are furnishing the licensed service in price, is there? A. None that I know of.

Q. That is if you want to rent or lease one of their reels or pictures, the price that is quoted you is the same from all the manufacturers provided the reels offered you are of the same age? A. Why, we pay so much per week for service, and that calls for so many reels.

Q. So many reels of a certain age? A. First run.

Q. You take only the first run? A. In all our houses.

Q. And it makes no difference whether the first run pic-

ture offered you is an Edison, Essanay or Selig, the price is the same? A. Just the same. 1

Q. Were you interested in this Crawford Exchange? A. No, sir, I was not.

Q. Were you one of the officers of it, or did you assist in operating it? A. Yes, I assisted in operating it but was not an officer in it.

Q. You are referring now in your testimony only to the Louisville branch? A. That is all.

Q. When was it that branch lost this money that you spoke of? A. I would judge it was in about 1908. I am not positive now as to the time, but it was about that time. 2

Q. Did this branch at Louisville ever handle licensed pictures? A. Nothing else.

Q. And its St. Louis branch at the same time was handling licensed pictures? A. Yes, sir.

Q. You know, do you not, that the Crawford Exchange had its license cancelled by the Patents Company? A. I know they went out of business.

Q. They went out of business when their license was cancelled and the supply was cut off? A. All I know is from what I have heard.

Q. When was it that this branch at Louisville lost this fourteen thousand dollars? A. During the time it was operating there, and that was, I suppose, they were in there may be about a year or may be a little less or may be a little longer. 3

Q. Did the branch operate until its license was cancelled? A. No, sir, it went out of business sometime before. In other words, they were losing money, and Mr. Crawford felt like he could handle the business the St. Louis, and he abandoned the Louisville field as far as an office was concerned. 4

By Mr. KINGSLEY:

Q. When you say you have entirely first runs in your theatres, you mean by that the first run in Louisville of that particular picture? A. Yes, sir.

Q. It does not mean these pictures were all of the same age? A. No, sir, some of them were three days, some released three days, and some twelve.

Q. And you paid for an entire program and didn't pay

1 for a program that was dissected out in parts? A. No, sir.

Q. You paid for a total program? A. Yes, sir, that is the way we paid.

Q. And when you showed a program in your house, did it have an individual picture in it of separate value to you, or did you estimate the entire program as one? A. The entire program as one.

2 THOMAS A. BROWN, the next witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposes as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Brown? A. Iowa City, Iowa.

Q. How long have you lived there? A. I have lived there for a matter of a little over eleven years.

Q. In what business are you now? A. I am in the moving picture business and cigar business.

3 Q. How long have you been in the moving picture business? A. Well, it is, as near as I can remember, about eight years.

Q. Always in Iowa City? A. Always in Iowa City.

Q. What theatre are you operating there now? A. I am operating Brown's Nickledon, and the American.

Q. What are the seating capacities of the two theatres? A. Well, the seating capacity of the American is 340. About 340. And the seating capacity of the Nickledon, the five-cent house, is 210.

Q. What service do you use? A. I use the licensed service.

4 Q. How long have you used licensed service? A. Always.

Q. Did you ever use any unlicensed service in your houses? A. I never used anything in either house as a regular service. I am using the Famous Players features at my American Theatre, in connection with my regular service, that is, I am using them twice a month. Every other Thursday and Friday.

Q. From what exchange are you getting motion pictures? A. From the General Film Company's Omaha branch.

Q. How long have you been getting these pictures from that source? A. Well, do you mean from the General Film Company? 1

Q. Yes, the General Film Company? A. Well, ever since they organized.

Q. Were you getting service from the Pittsburgh Calcium Light Company? A. Yes, sir; at the time the General Film Company bought them out. In October, 1910.

Q. When you were obtaining service from the Pittsburgh Calcium Light Company, did you find it possible to select a program and announce it in advance, and show it on the day set? A. We never knew what we were going to have until the films got in. 2

Q. Did you ever make any attempt to find out what you were going to have or to select it? A. Why, I have often tried to—well, of course, I am referring to the regular service, and sometimes—in those days they had very few subjects, but once in a great while, with a special feature, we would know what was coming, a few days ahead.

Q. You would be likely to get that? A. Yes, but there were very few of those.

Q. In the regular service, what was the situation? A. We had no way of knowing until it was sent to us. 3

Q. After the General Film Company began to serve your theatres, did you find it possible then to select a program in advance and to show it on the date set? A. Yes, we have an arrangement where the booking is booked a week in advance. I know a week in advance what I am to receive the following week. In other words—I know ten days in advance. Thursday of this week, I will get next week's program. It is possible for me to get out the entire program for both of my houses ten days in advance.

Q. Do you do that? A. I do. Part of the time I announce in the newspapers part of my shows coming the following week. 4

Q. Do you ever make requests of the General Film Company to change your programs, or give you some special films of merit, which you think would be pleasing to your audiences? A. Oh, yes; anything special that I desire, I always make requests for. In one particular case, they sent me a special copy from the producers. In the case of the Omaha cyclone. I wanted it immediately.

1 Q. Have you any independent houses in your vicinity?
 A. We have four. There are three regular picture houses in Iowa City showing independent service, in addition to the vaudeville house, making four.

Q. How large are the three independent houses? A. The Deevers Pastime Theatre seats, as near as I can remember, about 400 to 410. The Princess Theatre, using Universal service, seats in the neighborhood of about 260 or 270. And the Iowa City, Mr. Hanlon, manager, using the Mutual program, seats about 200. And the Ingelert Theatre, vaudeville house, seats 1100, using independent pictures.

2 Q. What projecting machines do you use in your theatres? A. I use the Motiograph.

Q. Have you always used the Motiograph? A. Not always, no sir. I have used the Pathe machine, and the Powers and the Edison.

Q. Do those four comprise all that you have used? A. Yes.

Q. Are you solicited from time to time by representatives of independent exchanges who ask you to take their service, either in connection with, or in substitution for
 3 licensed service? A. Are you referring to regular service?

Q. Yes. A. Not recently, I have not been.

Q. Do you receive— A. I receive circulars announcing the kind of productions they are making, and so forth. Oh, in a way, I am, yes. In that way.

Q. Do you find that the licensed producers of motion pictures are competing with one another in respect to the quality and character of their pictures, and in respect to trying to get the good will of the exhibitor, by sending him literature and circulars? A. Oh, yes. I receive circulars every week of all of the different productions, advertising their multiple reels and special features.

4 Q. During the period that you have been an exhibitor of motion pictures, have you been familiar with the prices of programs? A. Yes, sir.

Q. How do the prices that you are paying to-day compare with the prices that you paid in 1909 and 1910? A. Considering the number of reels that we are showing, and the quality of the film, we are paying less now than we were paying at that time.

Cross examination by Mr. GROSVENOR:

1

Q. Mr. Brown, the pictures that you display in your theatre are shipped to Iowa City from Omaha? A. Yes, sir; a part of them. And part of them are sent from Atlantic, Iowa, from another exhibitor to me.

Q. And then you send back to Omaha part of the pictures? A. Always. I nearly always return all my film in one shipment.

Q. How many licensed theatres are there in Iowa City? A. Two.

Q. Are yours the only ones? A. Yes, sir. They are only producing, as I understand, 48 reels, and I am using 42. It would be impossible for another theatre to use licensed service, without repeating, and using the same class and the same pictures I am now showing.

2

Q. How large is Iowa City? A. Ten thousand.

Q. There is no competition between the licensed manufacturers as to the price of the pictures?

Mr. KINGSLEY: I object to that as calling for a conclusion of the witness, and something manifestly beyond his knowledge.

3

A. No competition in regard to price?

By Mr. GROSVENOR:

Q. In other words, you pay for the pictures according to the age, don't you? A. Why, in regards to regular service, we do; but in regards to anything special, we pay sometimes an additional rental; for instance, we paid an additional rental, for the Omaha Cyclone. We would pay a special price for a picture like "The Wreck," produced by the Vitagraph Company.

4

Q. That was an exclusive feature, wasn't it? A. Not exclusive, no, sir. Any exhibitor using licensed service could have it by booking it, and paying extra money for it.

Q. Isn't it the general rule that the prices for all the films of the licensed manufacturers are the same?

Mr. KINGSLEY: I object to that as calling for a conclusion, beyond the competency and the knowledge of the witness.

1 The Witness: The price is the same?

By Mr. GROSVENOR:

Q. Yes. A. You mean without regard to the kind of film and the manufacturer of it?

2 Q. If you get a picture that is a thousand feet and ten days old and a drama, you pay the same for it whether it is a so-called Pathe, Selig or Biograph, don't you? A. I pay a certain rental each week, with the understanding that I am to receive, or I select the best manufacturers' productions, but if I did not receive some of the Vitagraph productions or some of the Selig productions, and the exchange furnished me with the Pathe, Pathe foreign, and the class of reels or pictures that naturally will not attract the public the way the Vitagraph comedies or Vitagraph two-reels would attract them, I would certainly insist upon having my service for less,—I would insist upon having the Vitagraph productions, or the better productions, and if I did not receive them, I would certainly make arrangements to get other manufacturers.

3 Q. Do you get a daily change? A. Yes, sir.

Q. How many reels do you get a day? A. Six.

Q. Then in one day you have six reels of six different manufacturers? A. Oh, no; not at all.

Q. Well, what have you? A. Some days we will have four reels, and some days we will have three reels of one manufacturer, in fact, on Sundays, I have made arrangements with our exchange to furnish me a Vitagraph two-reel feature, and it is understood that I am to receive that feature.

4 Q. Then you get six reels a day, and you pay the same for each day, do you, or is your service by the week? A. The service is always by the week, as I understand the picture business.

Q. Well, then, there isn't any change in price for your six reels per day, although the names of the different manufacturers change every day? A. There isn't any change—

Q. (interrupting): In the price, is there? A. In the price I am now paying, I am to receive certain manufacturers'. I am to receive all they produce, and of course I am paying that price with that understanding. If I did not receive those manufacturers' productions, the productions of those manufacturers, why, of course, as I told you before,

I would want to pay less money, because I could not afford to pay as much for some productions as I could for others.

1

Q. Do you take the entire output of the General Film Company? A. I use 42 reels a week.

Q. Do you take the entire output of the General Film Company? A. No, sir.

Q. Then you eliminate six reels a week, do you? A. Well, it is 48 reels—yes, sir.

Q. You throw out six reels a week? A. Yes, sir.

Q. And do you select which six you will throw out? A. Now, I request them—of course, I come so very near to running all the program, that I request them to keep out as much of the foreign stuff as I possibly can. It always hurts business to put out a foreign poster, and also the Melies. The Melies is very poor, in my town. They don't draw like some of the American manufacturers.

2

Q. Well, no distinction is made on the price you pay per week by reason of whether you have so many reels of Edison, or so many reels of Essanay? A. Well, of course if they went to furnishing me all the Essanay, and no Edisons, I would certainly insist upon a less price per week.

Q. I am not asking you if they did do something, what would happen. I am asking you a definite question, and try to answer it. Now, give the question to him, Mr. Examiner.

3

The Examiner repeats the question to the witness, as follows:

“Q. Well, no distinction is made on the price you pay per week by reason of whether you have so many reels of Edison, or so many reels of Essanay?”

The Witness: No distinction is made?

4

Mr. KINGSLEY: I object to the question on the ground that it is a quibble, and is an attempt to trap the witness into saying that each one of these pictures is charged to him at the same price, when as a matter of fact he cannot know whether they are or not.

The Witness: Why, it is understood. I don't see how I can answer that question in the way you want me to, because

- 1 it is understood that I get the Edison and Essanay both, each week.

Mr. GROSVENOR: Now, witness, there isn't any way I want you to answer the question. I want you to answer to the truth. Whether your answer be one way or the other makes no difference to me.

The Witness: Certainly.

- 2 Mr. GROSVENOR: Now, can you answer that question? Read it to him again. I have no particular way I want you to answer it.

The Examiner repeats the question to the witness, as follows:

"Q. Well, no distinction is made on the price you pay per week by reason of whether you have so many reels of Edison, or so many reels of Essanay?"

- 3 The Witness: I don't believe I can answer that question.

By Mr. GROSVENOR:

Q. Let me ask you this question. Is there any competition in price between the different manufacturers? A. I don't know.

Q. You know there is competition as to quality? A. Yes, sir.

- 4 Q. Why can't you answer whether or not there is competition as to price? A. For the reason that my service is furnished me by my film exchange, and it is understood with my manager at Omaha that I am to receive the certain manufacturers on certain days every week, and the quality of course is understood. A picture man understands that a two-reel Vitagraph is certainly worth at least double the amount to him that a foreign two-reel feature would be worth, and he would be ready and willing to pay double the amount for it, because he can take in double the amount at the box office.

Q. Is there any competition between the manufacturers as to price?

Mr. KINGSLEY: Objected to on the ground that the witness has already answered, stating that he does not know, that he receives his service from the exchange, and does not know what the manufacturer charges the exchange. 1

The Witness: I am not in a position to say.

By Mr. GROSVENOR:

Q. Well, is there any competition in the price of the products of these different manufacturers to you? I am not speaking, from the manufacturers to the General Film Company. But in the price the General Film Company quotes you. Is there any distinction made in the price of these different licensed manufacturers? 2

Mr. KINGSLEY: Objected to on the ground that it is an attempt to get the witness to answer the same question by indirection and in a misleading and confusing form, and is calling for a conclusion beyond his competency, and on the further ground that he has already answered the question, saying that he does not know. 3

Mr. GROSVENOR: The witness answered in regard to the prices from the manufacturers to the General Film Company. I am trying to make it clear to him that what I want to know is the price of the products of these manufacturers from the General Film Company to the witness. Now, witness, this is my question: Is there any distinction in the price you pay to the General Film Company, whether the film is of Edison make, or Essanay make, or Biograph make, or Vitagraph make, or any of the other ten manufacturers? 4

Mr. KINGSLEY: Objected to as immaterial.

The Witness: Well, there is a difference of course on anything special, as I told you in reference to "The Wreck."

By Mr. GROSVENOR:

Q. Take the regular releases, and eliminate the spe-

1 cials. Is there any difference in the price for the regular releases of the same age to you? A. To me from my exchange?

Q. No. To you from the General Film Company? A. Well, that would be from my exchange, of course.

Q. Yes. A. Any difference in price?

Q. Yes. A. Well, it is rather hard to answer the question the way you are putting it, because it is understood, as I said before, that we pay so much per week with the understanding that we receive so many Edisons, so many Vitagraphs, and so forth. We have it understood—

2 Q. Isn't it a fact that you pay the same thing for the regular releases of the same age which are not specials, of each of the different manufacturers? A. You see, we get the same number of each manufacturer's each week, and we pay the same amount of money in the regular service for it of course, but as I explained before, if they went substituting Essanay when we had a Vitagraph coming, a two-reel feature Sunday, we certainly would be entitled to some allowance.

Q. How many reels do you get a week? A. Forty-two.

3 Q. How many of those are Edison? A. One regular Edison and we are getting one two-reel multiple reel.

Q. How many Essanay? A. One multiple reel, and one single reel.

Q. Does it ever happen that you get two Edison reels one week and three Edison reels the next week, or one Edison reel the first week? A. Three Edison? No, not except in the case of a miss out. In case the film is burned up, or in case a train is delayed or something, they put in a substitute, but they would make an allowance if they did much of that.

4 Q. Do you get the same number of reels of each manufacturer without change, each week? A. As near as possible, yes.

Q. I am not asking you as near as possible— A. What I mean by that is, as they release them. A certain number every week. Each manufacturer. And of course I get them as they are released, you know. It is understood that I get eight multiple reels a week in addition to my single reels.

Q. Now, try and answer the question, yes or no, wit-

ness, and just bring your attention to bear on it. Does the number of reels that you get from each of the manufacturers vary from week to week or will you get exactly the same number of reels from each manufacturer each week? A. As near as I could answer that question, I would say they don't vary to any great extent.

Q. Do they vary to some extent? A. Naturally, because in the case of late trains or films missing out.

Q. If they do vary, is there any difference in the price you pay? A. Of course, if the regular stuff is late, and we have to run what we call emergency stuff, why, they certainly, at the end of the week, if there is an allowance coming to us, we attempt to have that allowance made always, if the reels are not as good as the contract is understood they would furnish.

Q. Were you using an Edison machine when the Patents Company was formed? A. That was in 1908, wasn't it?

Q. Yes. A. Using a Powers machine, if I remember correctly.

Q. Had you bought that outright? A. Yes, sir.

Q. Did you begin to pay a two dollar a week royalty afterwards? A. Now, I will have to recall it first. For a certain time, only a few—as near as I can remember, two or three months, I remitted direct to New York, if I remember correctly. After that time we went to Crawford. They said they would not say anything about the two dollars a week, and they would take care of it for us. And I did not know anything about it since, but I understood it was paid, and they sent us receipts for weeks for that.

Whereupon, at 12:30 P. M., the hearings are adjourned until 2 o'clock of the same day at the same place.

1

HOTEL LASALLE, CHICAGO, ILL.,

January 8th, 1914, 2:00 P. M.

Hearing resumed pursuant to adjournment.

Appearances as at the morning session.

MORRIS A. CHOYNSKI, the next witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposes as follows:

2

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. 852 North Clark Street, Chicago, Illinois.

Q. How long have you lived in Chicago? A. I have lived in Chicago eight years.

Q. In what business are you engaged? A. I am in the moving picture exhibition business.

3

Q. How long have you been in the moving picture exhibition business? A. I have been continuously in Chicago in the moving picture exhibition business, and prior to that time in Pittsburgh I have showed pictures in a penny arcade.

Q. Do you own or operate a theatre now? A. Yes, I am now interested in a theatre at 34 South Halstead Street, and I am about to open a theatre at the corner of Clark and Chesnut.

Q. What are the names and seating capacities of your two theatres? A. The Palace Theatre, 214 seats, and the Newberry, 740.

4

Mr. GROSVENOR: Is the Newberry the new one?

The Witness: The Newberry is the new one, yes.

By Mr. KINGSLEY:

Q. What service do you use in your two theatres? A. In the new one, I have contracted for the General, and in the Palace I am using Universal.

Q. How long have you been using Universal in the Palace? A. I have been using Universal service for about a week now.

Q. Have you ever used it in the Palace before that? A. 1
Not the Universal.

Q. What were you using in the Palace prior to contracting for the Universal? A. I used the Mutual program.

Q. How long did you use the Mutual? A. I used the Mutual for about five months.

Q. And prior to the time five months ago when you began to use the Mutual, what service were you using? A. General Film.

Q. How long have you been taking General Film service? A. I have been using General Film service since 1905.

Q. And by General Film service, you mean the products 2
of the licensed producers? A. Of the licensed producers. So-called licensed film.

Q. From what rental exchange were you taking licensed motion pictures when you were exhibiting them? A. From the American Film Service.

Q. And what is the American Film Service? Is that a branch of the General Film Company? A. Yes, the American Film Service is a branch of the General Film Company at 419 South Wabash.

Q. Before you took the service from the American Film Exchange, from what exchange were you securing your motion pictures? A. From George Kleine. 3

Q. How long did you take motion pictures from George Kleine before the General Film Company began to do business in this field? A. I took from the American before the General. I took from George Kleine for about five or six months in 1906. Then I went to the American Film Service. They had started in. There was no General Film Company then. And I have been continually with them ever since.

Q. So that you were with them before the exchange was operated by the General Film Company at all? A. Yes. I 4
owned three houses at that time, and took from the American branch continuously.

Q. Going back to the time when you were securing the motion picture service from the American Film Service Exchange, and before it was operated by the General Film Company, do you recall whether or not you were able to secure and announce and advertise a program in advance? A. No, we could not get an advance program. What you would call advance.

Q. What were your difficulties at that time? A. Why,

1 we could go to the different producers, and find out what they were going to sell, and then we could go to our exchange and make an arrangement to try to get this film, and they never would promise to give it to us. That is, we would not know before the final day whether we could have the film or not.

Q. Did this condition continue up to the time the General Film Company began to operate the American Film Service Exchange? A. Well, it got to be worse than that. We would go to the producers. Now, I am one of the oldest exhibitors, and maybe go to the producers myself. When the
2 American Branch was doing business, and they were a buying exchange, we could not then certainly say when we would ever get a show even after it was booked to us.

Q. Well, just prior to the time when the General Film Company began to operate in this field, had the conditions improved any with respect to the service of the American Film Exchange? A. Why, the condition got steadily worse.

Q. After the General Film Company began to do business and to operate the American Film Service Exchange, did you find any improvement? A. I found a decided improvement.
3

Q. In what respect? A. I found I could go to the General Film Company, and I did. I booked my show from the time the General Film Company started until I sold my houses two years ago, and I never had to do any rebooking, and they never failed to give me what they agreed.

Q. Were you able to advertise your program? A. I was.

Q. Were you able to produce your programs on the day set out? A. With one exception. And then they had a reasonable excuse to give me. It was only once that I was held up on my show.

Q. During the years you have been an exhibitor of motion pictures, have you been conversant with the prices of service to exhibitors? A. Yes, I believe I have.
4

Q. How do the prices that you are now paying compare with the prices that you paid in 1909 and 1910? A. Actual money, why a man would seemingly give more, but my price, I always paid the same. I think that I was getting film at fifty per cent. cheaper than I did under the old conditions.

Q. That is, you think that you are getting it at fifty

per cent. cheaper than you did under the old conditions? 1
 A. Oh, positively.

Q. What program did you have in 1909, and the early part of 1910? A. In 1909 and 1910 I showed two reels, and changed them three times a week.

Q. What did you pay at that time? A. I paid \$45.00.

Q. Will you tell us what you were paying the General Film Company and the kind of program you had before you began to take the Mutual service some months ago?

A. I paid \$45.00 to the General from 1910, and changed three times a week, two reels. Then they found that they could not give me that program for the three days and the two days, and that there was such a demand for the every day film, so they gave me a change every day at the same price. Then the competition became very keen, and people were showing more than two reels. I showed two reels when people were showing three, so, owing to the competition, I had to change every day, and then they gave me three reels, but my price always remained the same. The same service, and added on the extra reel. 2

Q. How do the prices that you were paying the General Film Company at the time you began to take the Mutual service, compare with the prices you then paid the Mutual Exchange? A. I have got to pay a little more now than what I had to the General. 3

Q. You are now taking from the Universal, are you not? A. The Universal.

Q. How do the prices of the Mutual service compare with the service furnished you by the General Film Company? A. The prices are practically the same. There is no difference.

Q. And do I understand you to say that the Universal is a little more than the General Film? A. It is a little more. We have got to pay more to round out the same program. 4

Q. Did you find it possible to get a complete program of Mutual pictures? A. No, we cannot.

Q. Are you getting a complete program now of Universal? A. No.

Q. What pictures are you running now with them? A. We are running what they call free-lance features.

Q. Did you find that the Universal and Mutual were

1 both so booked up that you could not get a complete program? A. Positively.

Q. Do you know of theatres which are running complete unlicensed programs? A. Yes, they are running complete unlicensed programs, but they are running two different programs. I cannot recall any house now that is running a complete unlicensed program.

Q. During the time that you were taking service from the General Film Company, did you find the General Film Company willing to co-operate with you in giving the sort of program that you wanted for your customers? A. Positively they co-operated. They gave me what I wanted.

Q. Did you ever make a request of them to make some changes in the program, and give you films that you thought would be desirable to show to your public? A. Many is the time I have had them change their system for me, and give me different pictures.

Q. During the time you were taking the General Film Service, did representatives of the independent exchanges call upon you from time to time to solicit your business? A. Oh, yes, numerous times.

Q. Did they make you inducements in the way of programs or prices? A. No, they never got that far with me. I was satisfied where I was, and was getting what I paid for.

Q. During the time you have been an exhibitor of motion pictures, have you observed whether or not the quality of the pictures furnished by the licensed producers has improved or deteriorated? A. Certainly I have noticed it.

Q. What would you say as to whether there has been an improvement or not? A. I say that they have constantly improved.

Q. Do you find that the producers of licensed motion pictures are competing with one another for the business of the exhibitor as to the quality of their products? A. Unquestionably.

Q. Do they send you printed matter and circulars as to the quality of their productions, and urging upon you that you insist upon certain subjects from your exchange? A. They send so many circulars and so much literature that it becomes a nuisance, really.

Q. What projecting machines have you used in your houses? A. The Edison and Motiograph. 1

Q. Does that comprise all that you have used? A. No, I used a Selig.

Q. And those three comprise all you have used? A. Yes, those are all that we used.

Mr. GROSVENOR: No cross examination.

SAMUEL KATZ, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposes as follows: 2

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. 624 West 31st Street, Chicago.

Q. How long have you been a resident of Chicago? A. 21 years.

Q. In what business are you engaged? A. Motion picture business. Exhibiting business.

Q. How long have you been a motion picture exhibitor? A. Since 1907. 3

Q. Do you own or operate a theatre? A. I do.

Q. Do you own or operate more than one theatre? A. I do.

Q. Are you owner or operator? A. I am owner.

Q. Will you tell us what theatres you own, and give us their names, and their seating capacities? A. I own the New Illinois Theatre at 3116 Wentworth Avenue, Chicago, seating 400. I own the Wallace Theatre, 622 West 31st Street, seating 300.

Q. How long have you been the owner of these two theatres? A. I have been the owner of the New Illinois since I have been in business. The owner of the Wallace about a year and a half. 4

Q. What service are you displaying in the Wallace and New Illinois Theatres? A. Licensed service.

Q. Have you always displayed a licensed service in the Wallace Theatre? A. Yes.

Q. Have you always displayed a licensed service in the New Illinois Theatre? A. Always, yes.

1 Q. Do you run any other service at any time intermittently in these theatres? A. I do. I run the Famous Players pictures at the Illinois. Occasionally I put in a Mutual picture at the Wallace.

Q. From what rental exchange are you obtaining your supply of motion pictures for these two theatres? A. I am at the American branch of the General Film Company.

2 Q. How long have you been getting pictures from the American branch of the General Film Company? A. I have been securing pictures from the American branch ever since they are in business, with the exception of about a year and a half when I was over at the Spoors.

Q. For what year and a half was that? A. That would be the year of 1912, and part of 1913, I think.

Q. From what rental exchange did you get motion pictures before the General Film Company began business? A. American Film Service.

Q. That is the same exchange as the one from which you are now receiving motion pictures? A. Yes, sir.

3 Q. When you were getting motion pictures from the American Film Service Exchange before it was operated by the General Film Company did you have any difficulty about securing programs in advance? A. Why, there was really no such a thing as a program in advance. It was booked from day to day, "Come in today and we will tell you what you are going to run tomorrow."

Q. Did you get what they told you you would run tomorrow? A. You could not rely on it.

Q. Did you do any advertising of a program in advance? A. I didn't dare to for several reasons.

4 Q. Did you ever try it? A. Yes, sir, and I was disappointed once and that cured me. I think the picture I was disappointed on was the Vesuvius Eruption, along about 1908 or 1909, it must have been. I had advertised that very very extensively, and had an enormously large crowd of people out, and for some reason or another I didn't get the film. The other theatre I believe showed it that day.

Q. Some of your rivals? A. No, it was not my rival. I think somebody jumped in at the eleventh hour, it was out at Forty-seventh Street, and offered to pay five dollars more to somebody down there, and they run it and I didn't run it.

Q. At any rate you didn't have it? A. No, sir.

Q. After the General Film Company began to operate the American Film Service Exchange did you see any change in this respect? A. Why, there seemed to be an immediate evolution of affairs. That is, the programs had increased wonderfully after the General Film Company had taken hold of it, and I was able to get bookings in advance, and as a rule we were given our pictures, unless it was due to express causes, but as a rule we were given our service.

Q. And does that situation still prevail? A. Yes, sir.

Q. You still get service which you are able to announce in advance and advertise? A. Yes, sir, for two weeks in advance.

Q. During the period that you have been an exhibitor of motion pictures have you been familiar with the prices of the program service to various theatres? A. Yes, sir.

Q. How do the prices you paid in 1909 and 1910 compare with the prices you are now paying? A. Well, really, I think in figuring it down in arithmetic I am getting it for about one hundred per cent. less for the value in this respect: I paid thirty-five dollars at the Illinois and as I figure it, I used to run one reel for thirty-five dollars and I am getting four for that now, and I get the four reels practically as new as I got the one reel.

Q. And you say the price is the same? A. Yes, sir.

Q. Have you observed during the years you have been an exhibitor whether or not the character, quality and artistic excellence of the motion pictures of the licensed producers have improved? A. They have improved, and principally since the Patents Company has taken hold of affairs. That is, we could rely on their makers to make a certain amount of film, and we could always depend absolutely on getting that kind of film.

Q. I think you have stated you always used licensed service in the main? A. Yes, sir.

Q. Are you solicited from time to time by the representatives of the unlicensed exchanges? A. Yes, sir.

Q. Do they make you any inducements in the way of price and program? A. Yes, sir.

Q. How do you find their prices compare with the prices you are paying? A. Just about the same, I think. I don't think there is very much difference in the grade of service that I use.

1 Q. Do they offer you a complete program? A. They offer it to me, but it is a great question in my mind whether they can do it with their limited output.

Q. Mr. Katz, what projecting machines have you used in your establishments from time to time? A. I have used the Powers 4, and the Powers 5, and the Powers 6 and the Kine-drome.

Q. Do these four models embrace all you have used in the way of projecting machines? A. Yes, sir.

2 Cross examination by Mr. GROSVENOR:

Q. You say that you showed in one of your theatres a Mutual picture from time to time? A. Yes, sir.

Q. Have you done that except within the last few months? A. No, I have not.

Thereupon, ADOLPH POWELL, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

3 Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Powell? A. In Chicago.

Q. How long have you been a resident of Chicago? A. Well, I have been here since July 1st, 1911.

Q. Before that time where did you live? A. In Kokomo, Indiana.

Q. In what business are you engaged? A. The moving picture business.

Q. Were you engaged in the motion picture business when you lived in Kokomo? A. Yes, sir.

4 Q. Do you own or operate a theatre in Chicago? A. Yes, sir.

Q. Did you own or operate a theatre in Kokomo? A. Yes, sir.

Q. Are you still interested in the Kokomo house? A. No, sir.

Q. Will you tell us what was the name and seating capacity of the house in Kokomo and about when you sold it, and what is the name and seating capacity of the house you own in Chicago? A. The seating capacity of the

house in Kokomo was three hundred and seventy-five, and the name of the theatre was the Ideal, and the name of the theatre in Chicago is the May Theatre, and the seating capacity is three hundred, all the law permits us to have. 1

Q. Is that the only theatre you have now in Chicago?

A. Yes, sir.

Q. What service are you using in the May Theatre?

A. The General Film Company's service.

Q. Have you always used the licensed service in the May Theatre since you have owned it? A. Yes, sir.

Q. What service did you use in the Ideal Theatre? A. The same service, the licensed service. 2

Q. From what rental exchange were you obtaining service for the Ideal Theatre when you operated it? A. At that time it originally was the American Film Service.

Q. And then, from what? A. Then it became the General Film.

Q. Was that located in Chicago? A. Yes, sir; I have been taking from the same one for five years.

Q. So your experience with the American Film Service exchange has been continuous for five years? A. Yes, sir. 3

Q. And extending from the period when it passed into the control of the General Film Company? A. Yes, sir, I began with the American Film Service and continued with the General Film, and I have never changed even the office, not only have not changed the service, but not even the office.

Q. Now, in 1909 and 1910, before the General Film Company became the owner of or interested in the property of the American Film Service exchange, did you have any difficulty in securing a fixed definite program for the Ideal Theatre, which you could advertise in advance? A. Yes, sir. I had some experiences which were very unpleasant experiences at the time I was getting the service. I would then have some of the other theatres, after I had advertised a certain picture or pictures, have the other theatres get the pictures ahead of me, and the consequences were at times such as that we were at loggerheads and fighting each other. 4

Q. Have you any particular example in mind of any unpleasant instances of the kind? A. I have got one in mind.

- 1 Q. Would you mind telling us about it? A. There was a release at that time which consisted of a feature in one reel, which was "The Trovatore," a production from the opera Trovatore, and I had that picture booked for what we call the third run. I thought that it would be safer for me, because I had expended a lot of money in advertising the picture, to secure it for the first run, at the release date, and I called the manager of the exchange in Chicago by long distance, and he booked the picture for the first day it came out, and they shipped it away from here at nine o'clock in the morning and it arrived at Kokomo at one-
- 2 thirty o'clock, and I had advertised the picture for about a week ahead in the newspapers, had secured an orchestra of six pieces of music, and secured a couple of singers in order to produce the picture in proper manner. On the day I was to show it, on Friday, I was called up by several friends who wanted to know whether there was not some mistake about me showing this picture, that it was being advertised at another house just a few doors from me. I told them there could be no mistake, but when I came down to my theatre I found out the other man had secured
- 3 the picture from his exchange in Indianapolis, and had paid an exorbitant price for it, and I had gone to a great deal of expense and was producing the picture at ten dollars, in addition to another program. He advertised it for five cents. The consequences were that both of us lost money on the picture. He got it secretly and advertised it just during the night. Both of us were at a loss in producing that picture.

- Q. You meant ten cents admission instead of ten dollars? A. Yes, sir. There were other unpleasant circumstances continually there. For instance, I had my program
- 4 booked for a week and I would get my lithographs in two or three days ahead of the time, and would spread them in the lobby, and then, I would find that before the day set for the picture that some other house would have the same picture and run it probably one or two days ahead of me, and it got to the point where we could not advertise any picture.

Q. In connection with the instance of exhibiting the Trovatore, do you know how it was that your opponent was able to show that picture ahead of you? A. He was getting

service from Cincinnati, and he could not procure this picture from his exchange directly, as the exchange had booked the picture to some other man in the State of Indiana, I think it was Shelbyville, but I am not positive, and he set to work then, and through the exchange secured the picture from the other party by paying an exorbitant price. He paid, I believe, fifty dollars for it, in order to run it the same day that I did.

Q. After you began securing the service for the Ideal Theatre from the General Film Company, what was your experience with respect to programs? A. They were invariably satisfactory.

Q. Tell us more in detail just what you could do after that. A. Well, it got to the point where we had to protect ourselves, that is, the exhibitors in Kokomo. We were fighting each other and trying to secure the best pictures ahead of the other, and in that way it got almost unbearable. We then came together, we exhibitors finally decided we would come together and arrange an agreement among ourselves. There were four houses in Kokomo at that time, and we came together, the four of us on a plan where two of the houses would take the licensed service and two the independent, which was also done by mutual understanding and agreement.

Q. Did these four houses then continue on, two taking the licensed service and two taking the unlicensed service? A. Yes, sir; for the time being.

Q. And was that still going on when you sold the Ideal Theatre? A. Yes, sir; it was going on when I sold it.

Q. Mr. Powell, were you able to select a program for any considerable period in advance after you began taking service from the General Film Company? A. For a week in advance.

Q. Could you advertise it? A. Yes, sir; I could advertise it.

Q. Did you advertise it? A. Yes, sir.

Q. And what has been your experience with respect to a program since you have been operating the May Theatre here in Chicago? A. Well, I have the privilege of selecting within a certain age anything that is open for me, the most suitable pictures. I value certain pictures a great deal more than I do others.

1

Q. Do you select your pictures? A. Yes, sir.

Q. How do the prices you were paying for a program for the Ideal Theatre from the American Film Service Exchange compare with the prices you were paying for a program for the same theatre to the General Film Company? A. The same.

Q. There was no change? A. There was no change.

Q. No change in the service or number of reels? A. Well, at that time we were running three reels, and now we are running four.

2

Q. And do you still pay the same price? A. Yes, sir.

Q. Although you have thirty-three and a third per cent. more reels? A. Yes, sir.

Q. What projecting machine did you use in the Ideal and May Theatres? A. The Motiograph.

Q. Have you used a Motiograph altogether during the years you have been in business? A. Yes, sir.

Q. Do the independent exchanges through their representatives solicit your business from time to time? A. Yes, sir, they have at times.

3

Q. Do they offer you any inducements in the way of program or prices? A. Nothing better in prices.

Q. Do they offer you a complete program? A. Well, such as they can offer.

Cross examination by Mr. GROSVENOR:

Q. Mr. Powell, the pictures which you displayed at Kokomo were shipped to you at Kokomo from Chicago? A. Yes, sir.

Q. And then when you were through with them there did you ship them back to Chicago? A. Yes, sir.

4

Q. I believe I understood you to say, Mr. Powell, that before the General Film Company was organized there were four theatres in Kokomo? A. Yes, sir.

Q. And that the four owners of the theatres were able to arrive at a satisfactory arrangement between you whereby the pictures that were produced every day were divided among you, so that there was no conflict between you, and you could advertise to your customers and patrons the pictures which you were going to display? A. Yes, sir.

Q. And that was before the General Film Company was

organized? A. Well, it was long after we had gone along there for a certain time. 1

Q. That you had this trouble? A. Yes, sir, between ourselves.

Q. The trouble which you have described? A. Yes, sir.

Re-examination by Mr. KINGSLEY:

Q. Did you want to be understood that it was before the General Film Company was organized, or afterwards?

A. It is not clear to me whether it was before the General Film Company came into existence or just about the time. 2

Re-cross examination by Mr. GROSVENOR:

Q. In any event the General Film Company didn't have anything to do with that arrangement you four exhibitors made? A. No, sir, it was our arrangement.

Q. And it was entered into by yourselves? A. Yes, sir.

Q. Without any participation by the General Film Company? A. Yes, sir.

Re-examination by Mr. KINGSLEY:

Q. And after that agreement two of the theatres became independent? A. Yes, sir. They were perfectly willing to do that. One had been taking the independent service, and the other one was ready to. 3

Q. And they went on from that date and did business as independent theatres? A. Yes, sir.

HORACE M. THOMAS, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposes as follows: 4

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. My regular residence is Springfield, Missouri. I am here on business the majority of the time, now.

Q. In what business are you engaged? A. Theatrical business.

Q. Do you operate a theatre? A. Three.

1 Q. What kind of theatres? A. Moving picture theatre, a vaudeville theatre, and a legitimate theatre.

 Q. Do you use moving pictures at any of your theatres?

A. Two. At two of the three theatres, I use motion pictures.

 Q. What are their names? A. The Alladin at Springfield, and the Jefferson at Springfield.

 Q. What is the seating capacity of the Alladin? A. Four hundred and fifty.

 Q. What is the seating capacity of the Jefferson? A. Between fourteen and fifteen hundred.

2 Q. How long have you had these houses? A. The Alladin about eight years, and the Jefferson, I built about three years ago.

 Q. What motion picture service do you use? A. General.

 Q. By General, do you mean service that you get from the General Film Company? A. Kansas City.

 Q. How long have you been using licensed motion pictures in these houses? A. Ever since I have been in the business.

3 Q. Have you ever used unlicensed pictures? A. Yes, sir.

 Q. Any considerable length of time or intermittently? A. Intermittently. Only once.

 Q. From what rental exchange did you take service for the Alladin Theatre in 1909 and 1910? A. Swanson-Crawford, Yale, Western, and American Film Service.

 Q. Were you taking service from the American Film Service Exchange at the time the General Film Company purchased its property? A. No, sir; before.

 Q. With what exchange were you doing business at the time the General Film Company came into your field? A.

4 Yale.

 Q. Did you go from the Yale Exchange to the General Film Company Exchange? A. Yes, sir.

 Q. During the time you were taking motion picture service from the Yale—what was the full name of that? A. Yale Film Exchange.

 Q. From the Yale Film Exchange, and from the other exchanges you have mentioned, were you able to select a program in advance, and to advertise it? A. No, sir.

 Q. What was the reason for your inability to do this? A. I think the film business then was in a chaotic state, and

rental exchanges were buying certain releases, and not buying all of them. And they did not give programs then. The business was not established like it is now. 1

Q. Did you ever attempt to advertise a program in advance at that time? A. No, sir.

Q. Did you have any difficulty in keeping your programs free and clear of your competitors? A. Yes, sir.

Q. Did you make any attempts to avoid that condition? A. Yes, sir.

Q. What attempts did you make? A. Why, I even came up to Chicago and got first runs out of here.

Q. Did that solve the problem? A. No, because my competitor was getting first runs out of St. Louis, and it was a question of cut-throat competition. 2

Q. So, having each come to the first-run condition, you still found that you were not keeping your programs clear? A. Yes, sir.

Q. After you began to take service from the General Film Company Exchange, was there any change in that respect? A. Yes, because I had the franchise right there for my houses, and my competitor took different service that did not conflict.

Q. Did he take a licensed service too? A. Yes, sir; one of them did. 3

Q. But that was a service that was so arranged that it did not conflict? A. There was no confliction.

Q. Was that arrangement made by you and the other house, or by the film exchange? A. Well, I think it was made by the film exchange, but it was satisfactory to both of us.

Q. You say there was another house there. Was that house an independent house? A. Well, it was independent part of the time, and association part of the time. It changed management several times. At the time of the formation of the General Film Company, it was running association pictures. 4

Q. How many motion picture houses are there in Springfield? A. Eight.

Q. How many are licensed, and how many unlicensed? A. Three licensed.

Q. And five unlicensed? A. Yes.

Q. Will you give us the names of the unlicensed houses,

- 1 and their seating capacities? A. People's, 1,000; Gem, 400; Grand, 300; Deever, 800; Happy Hour, 300.

Q. Are those all motion picture houses? A. Yes, sir. They all run over one reel. Two of them run vaudeville, but they are motion picture houses. They run four reels apiece. That does not include the Jefferson and the other three. I class that as a vaudeville house.

Mr. GROSVENOR: But it shows motion pictures?

- 2 The Witness: Yes, it shows two reels. The Pathe Weekly.

Mr. GROSVENOR: You include two vaudevilles, though, among these independent houses?

The Witness: Yes, but those are ten-cent houses. The Jefferson charges ten, twenty and thirty cents.

By Mr. KINGSLEY:

- 3 Q. During the time you have been an exhibitor of motion pictures, have you been familiar with the prices of programs? A. Yes, sir.

Q. How do the prices that you are now paying compare with the prices you were paying in 1909 and 1910? A. Well, there has not been any increase, and owing to the fact that there has been an arrangement of the films, I am paying less, because I don't have to use quite as new pictures as I used to have.

- 4 Q. Do you mean that you are not paying any more money, but that you are getting more pictures? A. No. In the days of competition, I had to get first-run film, I was forced to run earlier films than I am now, when I run twenty-day stuff.

Q. Are you solicited from time to time by representatives of the unlicensed exchanges? A. Yes, sir.

Q. Do they offer you any inducements in the way of programs or prices? A. They know I am a great booster for the General Film, and some of them are personal friends of mine, but I tell them that the qualities of their pictures are not as good. The prices are about the same.

Q. The prices are about the same? A. The prices are about the same.

Q. What projecting machines have you used in your houses? A. Edison, Powers and Standards. 1

Q. Do those three comprise all you have used? A. Well, I have used Simplex. At one time I used a Chronophone.

Q. That is during the whole period of your experience? A. Yes, sir.

Q. During the period when you were having difficulty in keeping your program clear from that of your competitor, did you have any experience of favoritism being shown your competitor by any rental exchange? A. Well, a representative would come down and solicit their business, and if he is supplying him, as it happened in one case, he gave them one film and got more money. Whoever paid them more money would get the better films. 2

Cross examination by Mr. GROSVENOR:

Q. How many licensed theatres did you say there are in Springfield? A. There are three picture theatres. What I call a picture theatre. And my vaudeville house.

Q. So there are four theatres that show licensed pictures there? A. Yes, but only three of them could be classed as moving picture theatres. 3

Q. Is this Jefferson, which is your vaudeville house, and where you also show moving pictures, the largest theatre in Springfield, Missouri? A. Yes, sir. Bigger than my legitimate house in seating capacity.

Q. You stated, Mr. Thomas, that you did try unlicensed pictures once? A. Yes.

Q. In what theatre was that? A. Alladin.

Q. Did your experiment prove successful? A. I did that until I could make an arrangement with another exchange handling licensed.

Q. You then took the independent pictures just for a time until you could get the licensed pictures? A. That was before the formation of the General Film Company, and that was when I could find a person to give me newer stuff. 4

Redirect examination by Mr. KINGSLEY:

Q. You were not satisfied with the licensed service you were getting? A. No, sir.

Q. So that you took unlicensed service in preference to it? A. Yes, sir.

- 1 Q. Finally you got the licensed service that you thought was better than the unlicensed service you were getting, and you changed again? A. I got a clear service.

Recross examination by Mr. GROSVENOR:

Q. Your difficulty was not over the character of the pictures, but over the character of the exchange service? A. What we call clear, or new in the town.

Q. And your difficulty was with the exchange and not with the pictures? A. Yes.

2

Redirect examination by Mr. KINGSLEY:

Q. But the difficulty was sufficiently acute so that you took unlicensed pictures rather than take the licensed pictures they were furnishing you? A. Yes. I was repeating.

Thereupon FLOYD BROWN, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

3

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Brown? A. Indianapolis.

Q. In what business are you engaged? A. Assistant manager of the Indianapolis Branch of the General Film Company.

Q. How long have you been the assistant manager of that branch? A. Since January 1st, 1912.

Q. When did you first become interested in the motion picture business? A. Why, I was an exhibitor in 1907.

Q. How long did you remain an exhibitor? A. Two
4 years.

Q. Where were you located? A. Robinson, Illinois.

Q. And when did you leave Robinson? A. About the first of February, 1909.

Q. Where did you go to? A. To Davenport, Iowa.

Q. And from there where did you go to? A. Minneapolis.

Q. When did you go to Indianapolis? A. The latter part of August, 1910.

Q. And for whom did you go to work when you went to Indianapolis? A. For the H. Lieber Company. 1

Q. What was their business? A. Film business.

Q. Did they run a rental exchange? A. Yes, sir.

Q. What was the name of it? A. The H. Lieber Company.

Q. After beginning work with the H. Lieber Company how long did you stay with that exchange? A. Until August 21st, 1911, when the General Film Company purchased the office.

Q. And did you then go to work for the General Film Company? A. Yes. 2

Q. In what capacity did you go to work for the General Film Company? A. Why, I was what you might term an assistant to the assistant manager.

Q. And on January first, 1912, you became the assistant manager? A. Yes, sir.

Q. The position that you have since retained? A. Yes, sir.

Q. Are you familiar with the details of the business of the Indianapolis branch of the General Film Company? A. Yes, sir.

Q. Were you familiar with the details of the business of H. Lieber & Company before the General Film Company opened a branch office in Indianapolis? A. Yes, sir. 3

Q. In what States, or portions of States does the Indianapolis branch of the General Film Company supply motion pictures to exhibitors? A. Why, in the greater part of Indiana, and in a very small portion of Illinois and Kentucky.

Q. Does that comprise all the territory in which you furnish service to exhibitors? A. Yes, sir.

Q. Are you familiar with the competition which the Indianapolis branch of the General Film Company encounters on the part of the unlicensed exchanges in the various cities in the territory you have described? A. Yes, sir. 4

Q. Have you prepared a list or a statement showing the towns that are served by the Indianapolis branch of the General Film Company, the number of motion picture theatres in each, and the character of the service, as to whether it is the licensed or the unlicensed, or features? A. Yes, sir.

Q. How did you make up this list? A. Why it was made up from our card index and of course the changes have been

1 made from time to time and our travelling representative and myself and Mr. Lieber corrected it up to date as nearly as we possibly could.

Q. And did you check it over carefully? A. Yes, sir.

Q. Did you work in collaboration with them upon the list? A. Yes, sir.

Q. And as of what date was this list made up? A. December 1st, 1913.

Q. How many motion picture houses are there in Indianapolis? A. About seventy-eight.

2 Q. How many of those are licensed? A. About thirty-one.

Q. How are the unlicensed houses divided? A. The Mutual has about nineteen or twenty, and the Universal has about twenty.

Q. And the rest, are what? A. They are features.

Q. How many motion picture houses are there in Terre Haute? A. There are fourteen.

Q. If you have that list with you, you may consult it, if it will refresh your memory at all? A. Yes, sir.

3 Q. How many in Terre Haute? A. There are about fourteen.

Q. How many of those are licensed? A. Seven.

Q. How are the unlicensed houses divided? A. Change that to six licensed houses now.

Q. Six licensed? A. Yes, sir.

Q. How are the unlicensed houses divided? A. Why, as nearly as I could give it four Mutual and three Universal.

Q. How many motion picture houses are there in Louisville? A. There are twenty-one.

Q. How many of those are licensed? A. Eleven.

Q. And how many are unlicensed? A. Ten.

4 Q. How many motion picture houses in Fort Wayne? A. Fort Wayne, about twelve.

Q. How many are licensed? A. Five.

Q. And how many unlicensed? A. Seven.

Q. How many motion picture houses are there in Muncie? A. Nine.

Q. How many are licensed? A. At the present time we have two.

Q. Do you know how many are unlicensed at the present time? A. The balance, really about seven.

Q. How many motion picture houses are there in Richmond, Indiana? A. Five. 1

Q. How many are licensed? A. One now.

Q. How many are unlicensed at the present? A. Four.

Q. How many motion picture houses in Anderson? A. Six.

Q. How many are licensed? A. Three.

Q. How many motion picture houses in Logansport? A. Change Anderson to four licensed.

Q. Two unlicensed? A. Yes, sir.

Q. How many motion picture houses are there in Logansport? A. Six. 2

Q. How many are licensed? A. Three.

Q. How many are unlicensed? A. Three.

Q. How many motion picture houses in Shelbyville and how many are licensed? A. Only one to my knowledge.

Q. How as to that one, licensed or unlicensed? A. Licensed, but he has been running an independent program also.

Q. Are there any towns in the territory which you serve having motion picture shows which are not supplied at all by the General Film Company? A. Yes, sir. 3

Q. Will you mention some of those towns, please, which have no licensed service? A. Atlanta, Cicero, Indiana, Lancaster, Berne.

Q. Pick out the larger ones? A. Edinburg, French Lick, Jeffersonville, Montpelier, West Baden, Worthington, and Robinson, Illinois, that is all I think of except real small places.

Q. Can you tell us something about the seating capacity of the larger independent theatres in some of the towns in the territory you have described? A. Yes, sir. Some of the towns I have described? 4

Q. In some of the towns that are mentioned on your list? A. Indianapolis has the largest house to my knowledge, supplied by the Mutual, has a seating capacity of about a thousand to twelve hundred. Do you want the name?

Q. Yes, if you can, give that to me. A. That is the Oriental. The Grand Central, I believe, has a seating capacity of five or six hundred. It is supplied by the independent. The Palmo No. 2 seats, I believe, in the neighborhood of five hundred. The Palmo No. 1 seats about three hundred and

- 1 fifty. The Apex seats, I think, in the neighborhood of five hundred. In Richmond, Indiana, there is the Murette, which has been using the General Film Exclusive program, but I believe is now independent, seating probably seven or eight hundred. The Lyric, of Fort Wayne, which is one of the largest houses, is independent. I never was in the house but it probably seats in the neighborhood of eight hundred or nine hundred. The Jefferson, at Fort Wayne has been running the Exclusive program, but I understand they are now running independent features. I think they seat somewhere between nine hundred and a thousand. Those are the two largest theatres in Fort Wayne. In Logansport there is a house, I don't remember the name of it, using the independent service, which seats probably six hundred or seven hundred. In Terre Haute, the American, using the independent service, seats four or five hundred. The Wiser Grand, if they are running pictures now they are using the independents, and it seats probably a thousand. Then there is a new picture house in Muncie which has been running the Exclusive program of the General Film Company. I could not say what they are now running, but I rather think independent features. That is the largest regular picture house in Muncie, and it seats six hundred people.
- 2
- 3

Q. Are they running General Film service at present?

A. Not our service. If they are running General Film, it is exclusive. I don't believe they are.

Q. Anything in Louisville? A. In Louisville, the Novelty is the second largest house. I think they seat about 800. They run independent.

Q. The houses you have mentioned in the foregoing towns are the larger houses? A. Yes, sir.

Q. Running independent service? A. Yes, sir.

- 4 Q. There are other houses in all these towns which run independent service, are there not? A. Yes, sir.

Q. Did you have knowledge of the conduct of the business of the H. Lieber Company prior to August, 1911? A. Yes, sir.

Q. Did you know about the service that was supplied by the H. Lieber Company to the exhibitors who came to it for motion pictures? A. Yes, sir.

Q. Prior to August, 1911, did the H. Lieber Company have any difficulty in supplying exhibitors with reference to giving them definite fixed programs? A. Yes, sir.

Q. What was the situation at that time? A. At that time we could not book anything farther than one day at a time, in other words, we could not give a man a week's booking in advance, owing to the fact that his competitor would obtain the same films from the exchange with which he done business before we could make shipment of his goods.

Q. Was this condition caused by the inability of the exchange to arrange a fixed definite program and deliver it, or was it caused by the fact that if a definite fixed program were arranged, a competitor would secure that program from some other exchange, and thereby cut your customer's business? A. It was due to the fact that his competitor, when he learned what program was to be shipped into the house, he would obtain the films from the exchange with which he was doing business ahead of our customers.

Q. After the General Film Company began business in Indianapolis, did any change occur in respect to furnishing fixed definite programs to the customers? A. Yes, sir.

Q. What were the conditions then? A. We began booking our customers a week in advance.

Q. How soon did you do this after the General Film Company began to operate in the Indianapolis field? A. Very soon after.

Q. Were you able to provide customers with fixed definite programs in advance and to deliver them on time, in accordance with the agreement after that? A. Yes, sir; unless a train was late carrying films from the customer using them the day before.

Q. Were you able to keep your customers clear from competitors? A. Yes, sir.

Q. Even when they were in the same neighborhood or operating side by side? A. Yes, sir.

Q. And did you do so? A. Yes, sir.

Q. Have you continued to do that since? A. Yes, sir.

Q. Are you doing so at the present time? A. Yes, sir.

Q. In selecting motion pictures for the use of your customers, are you under any compulsion by the home office? A. No, sir.

Q. Do you select the pictures yourself, or are the pictures selected for you by the home office? A. We select our films ourselves.

Q. In selecting pictures for your customers, do you en-

1 deavor to secure the sort of pictures that they want? A. Yes, sir.

Q. Do you consult their opinions and preferences from time to time with respect to the kind of pictures you order? A. Yes, sir.

Q. Are there any independent exchanges dealing in unlicensed motion pictures competing with your exchange for business in the territory, and among the towns you have described and mentioned? A. Yes, sir.

2 Q. What are the names of these unlicensed exchanges? A. The Mutual Film Corporation, the Universal Film Supply.

Q. Perhaps you had better go back and name them and tell us where they are located? A. The Mutual Film Corporation, Indianapolis, the Universal Film & Supply Company, Indianapolis, the Peerless Feature Film & Supply Company, Indianapolis, Warner's Features, Indianapolis, International Feature Film Company, Indianapolis, Sedeg Feature Film Company, Indianapolis. Several small concerns of which I do not recollect the names.

3 Q. Do any of the unlicensed exchanges you have mentioned, furnish complete programs to exhibitors? A. Yes, sir.

Q. Which ones do that? A. The Mutual, the Universal. Warner's Features are able to handle the customer on daily change for a short length of time, I understand; in other words they are able to handle the customer on change three times a week regularly. I don't know just how many features are handled by the other feature exchanges.

Q. In the competition you have described between your exchange and the unlicensed exchanges, do you from time to time lose any customers? A. Yes.

4 Q. Do you, from time to time, take customers away from the unlicensed exchanges? A. Yes.

Q. What do you say as to how this exchange balances? A. Why, it just about balances. The business just about balances.

Q. What is the average number of changes a week? A. Our changes will average—it must be seven or eight customers weekly.

Q. After the General Film Company bought the property of the Lieber Exchange in 1911, was there any in-

crease in the price of motion picture service to the exhibitors served by that exchange? A. No, sir. 1

Q. How do the prices you are now charging your customers for motion picture service compare with the prices the Lieber Exchange was charging its customers for motion picture service in the early part of 1911, prior to the purchase of its property by the General Film Company? A. The prices have been reduced.

Q. Will you describe to us the system of booking that you use? A. We book our customers—I don't know as I exactly get your question.

Q. Do you use the open booking or schedule? A. We use the open booking system. 2

Q. What is the open booking system? A. In the use of the open booking system, we know a definite release that is specified for any definite date to our various customers, and we simply try to make their programs balance, giving them as nearly the sort of program they desire as we can.

Q. Do exhibitors ever ask you to change their pictures and give them certain subjects which they desire? A. Yes, sir.

Q. And do you endeavor to do that? A. Yes, sir. 3

Q. Do you usually do it? A. No, I am not the booker.

Q. Does your booker do it usually? A. Yes, sir.

Q. Is he instructed to do so? A. Yes, sir.

Q. Is the price of motion pictures to the exhibitor governed by the age? A. Yes, sir.

Q. When you say that the price of motion pictures to the exhibitor is governed by the age, do you mean the physical age of the motion picture from the time that it has been released? A. The time that it has been released.

Q. When you sell a motion picture service to an exhibitor, do you quote him a sum for the whole program? A. Yes, sir. 4

Q. In furnishing such a program, do you endeavor to give him a balanced one? A. Yes, sir.

Q. What do you mean by a balanced program? A. I mean that we do not give him three dramatic subjects of the same nature, in other words, we give him a drama, comedy, Western drama, or two dramatic subjects of different nature, one comedy, depending a great deal on the class of program he desires for his particular territory.

1 Q. In quoting a price for a program to an exhibitor, you make a sum for the whole program, do you not? A. Yes, sir.

Q. Would it be feasible in making up this program, to distinguish between the different pictures as to the merit and desirability, and then fix different values upon each picture and carry out the resulting bookkeeping problem?

Mr. GROSVENOR: Objected to as leading in form.

2 A. No, sir.

By Mr. KINGSLEY:

Q. Do you find it more feasible to furnish a program in the way that you are now furnishing it? A. Yes.

Q. Do you find that exhibitors prefer the pictures of one producer over the pictures of another producer even when they are of the same age? A. Yes, sir.

Q. When you refer to the age of a motion picture, what do you mean? A. The number of days from the time when it is released.

3 Q. By that do you mean the number of days that it has been on actual exhibition before various audiences or might have been on actual exhibition before various audiences? A. We mean the number of days from the time the manufacturer releases the picture to us.

Q. In referring to the age of a motion picture, do you refer to the copy or the subject which has been on exhibition? A. I beg your pardon?

Q. In referring to the age of a motion picture, do you refer to the copy, the particular copy, or to the subject which has been on exhibition? A. We refer to the copy —no, to the subject.

4 Q. If a reel has not been in service at all though the subject has been released, does the value of the reel diminish as the reel's age increases? A. Yes, sir.

Mr. GROSVENOR: I object to that as leading in form, also move to strike out the answer.

By Mr. KINGSLEY:

Q. Did you ever have any experience with anything of that sort? A. Yes, sir.

Q. Will you tell us what it was? A. We bought at one time a Kalem picture, I just forget now the name of it—which was possibly a year old, figured from the release date, although the picture itself was brand new. Our customers objected to it and the fact that it had been released a long time, and they did not look at the quality of the picture, simply figured from the release day.

1

Q. Since you have been in the motion picture business has the price of service been determined by the age of the release date? A. Yes, sir.

Q. Has any other rule for fixing the value of motion picture service been in effect of which you are aware? A. No, sir.

2

Q. Do you know the rule which prevails in the unlicensed exchanges with respect to the prices of motion pictures? A. Yes, sir.

Q. What is it? A. The older the picture grows from the time of its release the lower the price becomes.

Q. In your business of leasing motion pictures for rental purposes, is the price or quality and popularity more important? By that I mean, where you are leasing a program to an exhibitor does he attach more importance to the price, or to the quality and popularity of his subjects? A. Why, to the quality and popularity.

3

Q. When was it you went out of the exhibition business? A. The first of February, 1909.

Q. What projecting machine were you using in your house when you were in the exhibition business? A. The first one was an Edison, and the second and third, Powers.

Q. And these three types embrace all you ever used in your house? A. Yes, sir.

Q. Do you sell projecting machines at your exchange? A. Yes, sir.

4

Q. During your experience as a dealer in projecting machines have you found that exhibitors when purchasing of you buy because they are cheap or because they are efficient and satisfactory? A. They buy because they are efficient and satisfactory.

MR. GROSVENOR: When they are supposed to be efficient and satisfactory.

1 By Mr. KINGSLEY:

Q. Do they show a preference for the latest models in machines when they come in? A. Yes, sir.

Q. Do you carry older models so they may take their choice? A. Not in stock. We order them if they want them.

Q. You act as agent for the older models? A. Yes, sir.

Cross examination by Mr. GROSVENOR:

2 Q. Mr. Brown, you receive the films from the factories of the different manufacturers, shipped from the factories to Indianapolis? A. Yes, sir.

Q. And then you distribute them from Indianapolis to these customers of yours located in Indiana, Kentucky and Illinois? A. Yes, sir.

Q. When you are through with them what do you do with them? A. We send them back to the various manufacturers.

3 Q. In using this list on direct examination to refresh your recollection you named a number of towns in which you stated there is no theatre taking films from the General Film Company's branch. It is true, is it not, that there are also a number of towns where the General Film Company has a customer or two customers but in which there is no independent theatre? For instance, in the town of Attica, there are two so-called licensed theatres but no independent theatre? A. Yes, sir.

Q. In Columbia City there are two licensed theatres but no independent theatre? A. I believe that is right.

Q. And in Greensburg there are two licensed theatres but no independent theatre? A. Yes, sir.

4 Q. In Paris, Illinois, there are two licensed theatres but no independent theatres? A. Yes, sir.

Q. It is true, is it not, in these towns there is a licensed theatre but no independent theatre: Carlisle, Clay City, Cold Bluff, Danville, Dugger, Farmland, Galveston, Huntingburg, Jonesboro, Lapel, Loogootee, Morristown, New Military Home, Oolitee, Pendleton, Rockville, Scottsboro, Shirley, Spencer, Thornton, Warren, Zionsville, West Port and Newman, as appears from your memorandum which you used in testifying? A. With this exception, that since that memorandum was made up Clay City has discontinued the

licensed service. Farmland, Galveston, Zionsville and West Port run one night per week. 1

Q. You testified on direct examination that in Muncie, Indiana, there are nine theatres of which you stated seven are unlicensed. Is it not a fact that your memorandum shows that there are nine theatres in Muncie, four of them licensed, one Mutual, one Universal, two junk theatres and one feature theatre? A. Yes, sir. Since that memorandum was made up the Majestic Theatre has discontinued our service, and the Columbia, I understand, has discontinued the General Film Exclusive service, which we do not supply, leaving us with the Lyric and Crystal. 2

Q. Well, you included in the nine theatres two theatres you termed "junk theatres." What does that mean? A. Using a cheap grade of old films.

Q. They are very small places? A. Yes, sir.

Q. Store room shows are they? A. Yes, sir.

Q. And not entitled to be classed with the theatres that you furnish? A. No, sir.

Q. So that as a matter of fact there are in Muncie only six real theatres? A. About six, yes, sir.

Q. And at the time this memorandum was prepared you had four of those theatres? A. Yes, sir. 3

Mr. KINGSLEY: You have since lost two?

The Witness: Yes, sir, I beg your pardon, we only had three. One was being supplied by the General Film Exclusive service in Chicago.

By Mr. GROSVENOR:

Q. Are some of the theatres in this territory which your branch is supposed to include supplied by the other branches of the General Film Company? A. Yes, sir. 4

Q. In what towns? A. Columbia City.

Q. In any other towns? A. The American branch has been supplying one house in Logansport, but as he has been using reels which we do not buy I am not sure as to whether they are still handling that account.

Q. Have you attempted by this memorandum to show the theatres supplied by the other branches of the General Film Company, or only the theatres supplied by your own branch?

1 A. I have attempted to show the theatres supplied in our territory.

Q. By whom? A. Oh, just strike that out. I have attempted to show the theatres supplied by the General Film Company by the various branches.

Q. This memorandum shows in Richmond that there are five theatres, two supplied by you, one by the Mutual, and two by the Universal. On direct examination you stated that you supply only one theatre in Richmond. Have you lost a theatre since this memorandum was prepared? A. Yes, sir.

2 Q. Have you gained any theatre there? A. Yes, sir.

Q. Among the theatres that you supply in your territory it is true, is it not, that there are many theatres of the size named by you, or given by you on your direct examination when referring to some of the independent theatres when you stated their capacities? A. Yes, sir.

Q. That is, you named in response to Mr. Kingsley's question some of the large theatres of the independents in your territory? A. Yes, sir.

Q. You have many theatres of that size? A. We have a number of them, yes, sir.

3 Q. In leasing pictures to your exhibitors, or customers, you charge your customers according to the age of the several films, and not according to the make or the name of the manufacturer? A. Yes, sir.

Q. So that for all films of a certain age you charge the same for whether they are made by Edison, Essanay, Selig, Biograph, etc.? A. Yes, sir.

Q. And your office pays for those several films per foot? A. Yes, sir. Well, as the films are paid for by the New York office, I can't say as to that.

4 Q. Don't you make reports to the home office as to how much you obtain for them? A. Yes, sir.

Q. And you make those reports showing the number of feet obtained from each manufacturer? A. Yes, sir.

Q. And what is your opinion as to the method of payment? Is it not governed by the amount of feet that you buy from each of the manufacturers? A. I presume it is, but I don't know.

Q. It is your understanding that the rate per foot is the same for each manufacturer? A. I understand that is so. I don't know what price they pay for the film.

Q. Have you gained any theatres since this list was made up? A. We have gained and lost.

Q. So that the number that you furnish today is about the same as it is here? A. The number we furnish today? No, the number we furnished last week was just a few less than when that list was made up.

Q. And in December, 1912, that is a year ago, did you supply about the same number that are on this list? A. Just about.

Mr. GROSVENOR: I would like to have this list marked for identification. I would like to have an opportunity to look it over, and I will see that it is returned to the witness in the near future.

The list referred to was marked by the Examiner, "Petitioners Exhibit No. 263, for Identification," and turned over to Mr. Grosvenor.

Redirect examination by Mr. KINGSLEY:

Q. In this list, or memorandum, what is the total number of motion picture houses entered? A. Four hundred and thirty.

Q. How many of these are licensed? A. One hundred and eighty-seven.

Q. How many are unlicensed? A. The difference between one hundred and eighty-seven and four hundred and thirty—two hundred and forty-three.

Q. Do motion picture films, when wound up on the reel, all measure the same length? A. No, sir.

Q. What is the variation between the length of the films wound up on the reels? A. Well, they are approximately a thousand feet.

Q. I didn't ask you that. I asked you what the variation is. Are some as low as nine hundred and some as high as eleven hundred? A. No, sir, they vary from possibly nine hundred and fifty to ten hundred and twenty-five feet.

Q. So that, there is a range of difference of at least seventy-five feet? A. Yes, sir.

Q. Does this difference in the lengths make any difference in the price that is charged the exhibitors? A. No, sir.

Q. Do they, as a matter of fact, question the length of the film itself when they are taking away the reel? A. No, sir.

1 Recross examination by Mr. GROSVENOR:

Q. Mr. Brown, you gave on redirect the number of theatres in your territory as 430. You have included in that number of 430, a large number of so-called junk shows, or places described by you on cross examination as store room shows? A. Several, yes.

Q. Well, it is more than several, isn't it? A. Well, you will notice some of those are marked feature. And Junk.

Q. Those that are marked "junk" are store room shows, aren't they? A. Yes, sir.

2 Q. You have included a large number of store room shows, haven't you, in that 430? A. Yes, sir.

Q. You have also included a number of shows which exhibit only features? A. Yes, sir.

Q. Are shows which exhibit only features, open as regularly or are they as well established in business as the houses which show regular changes of program and take your service? A. Yes, sir.

Q. How many junk places have you given among that 430? Please refer to your memorandum and count them. A. 21.

3 Q. And how many places where features only are shown have you included on that list? A. 16.

Q. Then, that would make the number of theatres 429 instead of 430? A. Yes, sir.

Q. And the balance, then, is made up, according to your memorandum, of 97 Mutual and 109 Universal features? A. Yes, sir.

Redirect examination by Mr. KINGSLEY:

4 Q. Where you have listed some of these unlicensed theatres under the heading "junk," do you mean by that that they are so small and insignificant that they do not exhibit to customers from time to time? A. No, sir. They may be a better house than a house using higher class service.

Q. Do some of these junk shows show one evening after another all the week? A. I believe most of them are showing daily excepting Sunday.

Q. Does it ever happen that a so-called junk show

changes its service and takes on the General Film Service?
A. Yes, sir. 1

Q. Does it ever happen that a General Film show abandons the General Film Company and takes on a junk service? A. Yes, sir.

Q. Has that happened from time to time in your experience? A. Yes, sir.

Q. When you put in the word "junk" here opposite the name of a theatre or opposite a theatre listed in a given town, do you mean that that is a theatre which is no longer to be solicited, or is so poor and insignificant that no attention should be paid to it by your solicitors on the road? A. No, sir. 2

Q. Do you regard it as possibly a prospect or a possible customer?

Mr. GROSVENOR: I object to that as leading.

The Witness: Yes, sir.

Recross examination by Mr. GROSVENOR:

Q. Then what did you mean, witness, by referring to it as a store room show or a place which you said was only open once a week, as I understood you, when you first referred to the word "junk" when I brought it out on cross-examination? 3

Mr. KINGSLEY: I object to it on the ground that the answer of the witness speaks for itself. He was referring to some of the shows, and not to all of them.

The Witness: I will have to ask you to read that. 4

The Examiner repeats the question to the witness as follows:

"Then, what did you mean, witness, by referring to it as a store room show or a place which you said was only open once a week, as I understood you, when you first referred to the word 'junk,' when I brought it out on cross examination?"

1 The Witness: On what question was that?

Mr. GROSVENOR: Please read to the witness his testimony as to that point.

Thereupon the Examiner read to the witness the following questions and answers:

2 "Q. You testified on direct examination that in Muncie, Indiana, there are nine theatres, of which you stated seven are unlicensed. Is it not a fact that your memorandum shows that there are nine theatres in Muncie, four of them licensed, one Mutual, one Universal, two junk theatres, and one feature theatre? A. Yes, sir. Since that memorandum was made up the Majestic Theatre has discontinued our service, and the Columbia, I understand has discontinued the General Film Exclusive Service, which we do not supply, leaving us with the Lyric and Crystal. Q. Well, you included in the nine theatres two theatres you termed 'junk theatres.' What does that mean? A. Using a cheap grade of old films. Q. They are very small places? A. Yes, sir. Q. Store room shows are they? A. Yes, sir. Q. And not entitled to be classed with the theatres that you furnish? A. No, sir. Q. So that as a matter of fact, there are in Muncie only six real theatres? A. About six, yes sir."

3

By Mr. GROSVENOR:

4 Q. Now, witness, when you used the term "junk" in this memorandum you had in mind the same thing as you testified to respecting that word on cross examination? A. In your former question you referred to Muncie only, and you didn't say running one night only, but when this list was made up the houses that were running a class of service other than the Mutual or the Universal, the makes of which we were not sure of, and which we believed to be a cheap service, were listed as junk.

Q. Many of them are these store room shows? A. Not necessarily. Some.

Q. Those at Muncie were? A. In Muncie, yes, sir.

Re-examination by Mr. KINGSLEY:

1

Q. Do you mean that a store room show is necessarily a show that does not exhibit every night in the week, but just once a week? A. No, sir.

Q. This expression, "store room show" you have not used in this examination until counsel used it have you? A. No, sir.

Q. And do you mean by a "store room show," or do you understand the counsel to mean by a "store room show" a show which only exhibits perhaps, once a week, or once in two weeks, and closes in the interim? A. He evidently means that. 2

Q. Do you mean that when you refer to a "store room show?" A. No, sir.

Q. What do you mean when you refer to a store room show? A. When I refer to a store room show I mean a show of small seating capacity, usually located in a room formerly used for store purposes.

Q. And may it be a store where the interior has been changed and altered? A. Yes, sir, for exhibition purposes.

Whereupon, at 4:45 o'clock P. M. on this January 8, 1914, the hearings were adjourned until 11 o'clock A. M., January 9, 1914, to be resumed at the Planters' Hotel, St. Louis, Missouri. 3

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IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

2

UNITED STATES OF AMERICA, Petitioner,	}	
<i>v.</i>		No. 889.
MOTION PICTURE PATENTS CO. and others, Defendants.		Sept. Sess., 1912.

PLANTERS' HOTEL, ST. LOUIS, MO.,
Friday, January 9, 1914, 11 A. M.

The hearings were resumed pursuant to adjournment and by agreement of counsel at the Planters' Hotel, St. Louis, Mo., at 11 o'clock A. M., January 9, 1914.

3

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

Present also, JOSEPH R. DARLING, Esq., Special Agent.

CHARLES F. KINGSLEY, Esq., appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

4

H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

HOUSTON N. MORGAN, a witness produced on behalf of the defendants, of lawful age, being first duly sworn by the Examiner, deposes as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. St. Louis, Missouri.

Q. How long have you been a resident of St. Louis? A. 1
A little over 14 years.

Q. In what business are you engaged? A. In the exhibit-
ing of motion pictures.

Q. How long have you been an exhibitor of motion pic-
tures? A. Well, I think it is about 18 years, or 19.

Q. Are you the owner or operator of a theatre at pres-
ent? A. I am the manager of the New American Theatre,
located in East St. Louis, at present.

Q. What is the seating capacity of your theatre? A. Six
hundred nine.

Q. How long have you been the manager of that theatre? 2
A. About 7 weeks.

Q. Prior to that time, were you engaged in the motion
picture exhibiting business? A. Yes, sir.

Q. In what capacity, and in what location? A. As man-
ager.

Q. Of a theatre? A. Of the Easton Taylor Theatre.

Q. Where was that theatre located? A. In the City of
St. Louis, on Easton Avenue.

Q. What is the seating capacity of that house? A. About
600.

Q. How long were you the manager of it? A. From the 3
opening of it, after we closed the Bonita Airdome, Septem-
ber 20th, until I went across the river to East St. Louis,
which would be, I think, about 6 or 7 weeks.

Q. How long was the Bonita Airdome open? A. All
Summer.

Q. Were you the manager of that during the Summer?
A. From the 22nd of July.

Q. Prior to the 22nd of July, 1913, what were you doing?
A. One year's time before that, I was the manager of the
Gem Theatre on 6th Street.

Q. What was the seating capacity of the Gem Theatre? 4
A. Nine hundred and something.

Q. Was that in St. Louis? A. In St. Louis, yes, sir.

Q. What was the capacity of the Bonita Airdome? A.
Well, we could get in about twelve to fifteen thousand people.
We had a seating capacity of about three thousand. A little
over three thousand.

Q. You say you had been manager of the Gem for part
of the year? A. Yes, sir.

1 Q. And prior to assuming the management of the Gem Theatre, what were you doing? A. I have been managing and lecturing, and talking with the pictures.

2 Q. Will you tell us some of the houses you were connected with during the preceding years, and their seating capacity? A. I was the manager and part owner of the McKinley Theatre, 2112 South Jefferson, for about a year, I think it was. The seating capacity was between five and six hundred. I don't know the exact amount. Then I was the manager and lessee of the Fremont Theatre, Pacolecci and McNear Avenues, in St. Louis. Then I have played, my wife and I, as talking picture people, and I as lecturer for different films, feature films and ordinary films, in about—well, I might say every theatre in the City of St. Louis. That is, good theatres.

3 Q. What is the seating capacity of the Fremont? A. The Fremont was a little over 400. About 412 I think.

Q. Have you stated the seating capacity of the Gem? A. Nine hundred. A little over 900.

3 Q. Has your experience as an active manager or lecturer in motion picture work extended over the period embraced from 1907 up to the present? A. Exclusively, yes, sir.

Q. What service are you using in the Gem Theatre? A. We were using when I came there, the General service. We changed to the Universal service. Then we changed from the Universal service to the Mutual service, then from the Mutual service back to the General service. We were running it when I closed my management. The General service; what is called the commercial service.

Q. What service are you using in the New American? A. The General.

4 Q. Have you made any changes at the New American with respect to film service? A. Yes, sir.

Q. What changes have you made? A. I am using the same General service, but a better service than was being run at that theatre when I took charge, and when I took charge, we were getting four changes a week, running 21 reels. I am now running 35 reels of pictures, changing daily, 5 reels of pictures changed each day.

Q. Do you recall any theatre that you were managing in 1909 and the early part of 1910? A. I was running the McKinley Theatre, managing the McKinley Theatre in 1910, I am sure.

Q. At that time were you familiar with the motion picture service that was received at the McKinley Theatre and by other theatres in your immediate neighborhood?

A. I was, yes, sir.

Q. What service were you using at the time, licensed or unlicensed? A. I was using at the McKinley Theatre, Swanson and Crawford service.

Q. Was that a licensed or unlicensed service? A. Unlicensed.

Q. What program did you run at that time? A. Do you mean as to age?

Q. Yes, age and number of subjects? A. It was what was called a commercial service, \$35.00 a week—no, I believe it was \$28.00. I believe I was getting four reels, and possibly I might have been running five. I would not be positive as to that.

Q. Were you familiar with the prices of licensed service to theatres in the early part of 1910, and the latter part of 1909? A. I was.

Q. Are you familiar with the prices of licensed service to theatres at the present time? A. Yes, sir; I think so.

Q. How do the prices paid for licensed service by exhibitors in the latter part of 1909 and the early part of 1910 compare with the prices paid for the same service at present?

A. Well, now, the service you mean, service conditions then and service conditions now? Not the same service?

Q. By same service, I meant licensed? A. The conditions?

Q. Yes, but not necessarily the physical condition. A. Well, the prices of the service today, counting the quality of the service, I consider that I am getting a much better service today than what I got in those days, or what I could have got at that time at the same price.

Q. Considering the service with respect to the number of reels and the change of reels, how do the prices paid in 1909 and 1910 compare with the prices paid at present?

A. Well, as far as the general releases are concerned, I would say the prices are about the same. I am not speaking of what is called an exclusive service.

Q. During the period regarding which I have questioned you, have you been familiar with the prices charged by unlicensed exchanges for the programs for motion picture houses? A. I have; yes, sir.

1 Q. And during that same period, have you been familiar with the prices charged by the licensed exchanges? A. I have. In my position as manager.

Q. How do the prices charged by the unlicensed exchanges compare with the prices charged by the licensed exchanges during the same period? A. Well, now, that is a very peculiar question to answer, and I will tell you why. Being an ex-assistant manager of an independent exchange, I know their methods and standard of prices that they were getting, and being an exhibitor who has been renting from the licensed people, I have my knowledge from them.
2 I have found that it has been a very hard proposition to keep thoroughly posted as to the prices maintained by independent exhibitors—not exhibitors, but film exchanges, owing to certain peculiarities of their ways of doing business, while the General Film Company—my experience with them has been that their prices have been about the same, and not changeable and fluctuating, as you might say.

Q. What theatre did you have which for some period ran an unlicensed program? A. The McKinley Theatre.

Q. Did the McKinley Theatre ever run a licensed program? A. Yes, sir.
3

Q. What price did you pay for the unlicensed program? A. For the unlicensed program, I paid twenty—I think it was twenty seven dollars a week.

Q. What price did you pay for the licensed program? A. I think I paid twenty-eight dollars a week. I think it was just about the same price.

Q. Did you have the same number of reels? A. Yes, sir; yes, sir.

Q. So that the price did not vary to any great extent, so far as the number of reels was concerned? A. Not as to
4 reels, but the difference in price was—with the unlicensed program I did not have to pay for posters, while the licensed program I had to pay for every poster used. There was the difference.

Q. Do you recall your experience as the manager of a motion picture theatre in 1909 and the early part of 1910 with respect to keeping your program clear from that of your competitors? A. What do you mean, the General program and the Universal program?

Q. No. I am speaking now— A. Any particular program?

Q. I am speaking now of your experience as the manager of a licensed theatre in 1909 and 1910 prior to the— A. In 1909 and 1910, I was running, I myself was running a theatre running the unlicensed.

Q. At that time you were running the unlicensed? A. Yes, sir; the unlicensed at the McKinley Theatre.

Q. Yes. Now, going back prior to that period, were you managing a motion picture theatre which was using the licensed service prior to 1910? A. Yes. Running the licensed program? Yes, sir. I was running the Hamilton Theatre on Hamilton and Plymouth, Hamilton and Plymouth Place in St. Louis.

Q. When you were running the Hamilton Theatre and using licensed service, from what exchange were you securing your service? A. Western. What was called the Western Film Exchange, owned by the Aitken Brothers. Harry Aitken and his brother.

Q. Did you have any difficulty at that time in securing a program which you could announce in advance and advertise? A. None whatever.

Q. Did you have at that time any experience of competition, or did any knowledge of competition in which other houses, motion picture houses were involved, come to your attention, where unfair advantage was taken of advertising of the programs in advance? A. Yes, I remember an incident where I was merely employed at the theatre. I was not financially interested in the theatre. I remember a very particular incident where I thought a great injustice was done to the exhibitor. The Favorite Theatre on Cherokee Street had advertised extensively and had made arrangements with the Western Film Exchange to produce on the release day, a picture gotten out by the Selig Polyscope Company called "Custer's Last Fight." They advertised it extensively in that neighborhood to be produced that night, that is, the evening of a certain day. I could not tell the exact day. I remember very well the gentleman I was working for, Mr. Weinburg, Fred Weinburg, when he seen the advertising matter of his opposition theatre, he immediately got in communication with the Yale Film Exchange in Kansas City and got "Custer's Last Fight" and produced it in the afternoon before the other man could produce it that evening. I remember that very distinctly.

Q. Where was the other house to get its picture from?

1 A. It was to get it from the Western Film Exchange here in St. Louis.

Q. And the opposition got it from the Yale Film Exchange? A. And the opposition sent in to Kansas City and got it from the Yale Company.

Q. What types of projecting machines have you used in your various houses? A. Well, Edison, Powers, Simplex, Motiograph, and also everything that has been made.

Q. Can you name any more? Do these types embrace practically all you have ever used? A. Every one. I use more Powers than any other machine.

2 Q. During your experience in the motion picture business in St. Louis were you ever connected with a motion picture exchange? A. Yes, sir.

Q. What exchange was that? A. The St. Louis Film & Supply Company.

Q. Did the St. Louis Film & Supply Company deal in the licensed or unlicensed motion pictures? A. Unlicensed.

Q. How long were you connected with that company? A. Five weeks or about six weeks.

3 Q. In what capacity did you work there? A. My official title was assistant manager.

Q. Was it a part of your duty to work up new business for the exchange? A. Yes, sir.

Q. How long had the exchange been running before you became connected with it? A. About three days. They practically had not opened up, they had just started.

Q. At what time was this that you were connected with this exchange? A. In the latter part of December, 1911, until in the latter part of January or the first of February, 1912, I believe. I would not be sure as to the exact dates.

4 Q. What brands of unlicensed motion pictures were exhibited by the St. Louis Film Supply Company? A. We had the Rex, and in fact all they made. That was before the split in the unlicensed, and there was only one company then. At the present time there is the Mutual and the Universal. A split between the independents has taken place since then. At that time they were all together and we handled the Bison, the Flying A, the Thanhouser, the Rex and the Imp. Well, I could not name them.

Q. If you think of any more name them? There were quite a number of them? A. The Eclair, and did I mention the Reliance?

Q. No. A. The Reliance. Well, I can't offhand tell all. 1

Q. You had them all? A. Yes, sir, everything, the Ambrosia.

Q. Did the St. Louis Film Supply Exchange furnish a complete motion picture program? A. Yes, sir, absolutely.

Q. How many motion picture theatres became customers of the St. Louis Film Supply Company? A. In this vicinity?

Q. Yes? A. Well, I couldn't tell you the exact number, but we had quite a number of them. I know in the five weeks I was there we took on fifteen hundred and eighty-five dollars' worth of business per week, but as to the exact number of theatres I could not tell you. 2

Q. What were the circumstances of your terminating your relationship with the St. Louis Film Supply Company? A. Our opposition exchange, the Swanson-Crawford Company, bought the St. Louis Film Supply Company, and got them to retire from the field.

Q. What service was the Swanson-Crawford Company furnishing at that time, the licensed or the unlicensed? A. The unlicensed, the same brands and makes of pictures that we were handling.

Q. At the present time do the unlicensed exchanges, or their representatives solicit you for business? A. Oh, yes, every week we receive a call from them. 3

Q. Do they offer to furnish you a complete program? A. Absolutely, yes, sir.

Q. Do they, as a matter of fact, furnish complete programs to the various motion picture houses here in St. Louis? A. Yes, sir, and they have furnished them to me at the Gem Theatre.

Q. Do you have any competitor in your immediate neighborhood who is using the same service as yourself? A. To-day? 7

Q. Yes? A. Yes, sir, just two blocks from me.

Q. From what exchange are you obtaining your service? A. The General Film Company's exchange at Grand and Oliver Streets here in this city.

Q. What is the name of your competitor who is also using the licensed service? A. Mr. Redmond, at the Lyric Theatre.

Q. What is the seating capacity of that theatre? A. I am guessing at that. I am told it is about between five and six hundred. I never was in the house in my life.

1 Q. Do you have any difficulty in keeping your program clear from Mr. Redmond's program? A. None whatever.

Q. Do both obtain their supply from the same exchange? A. Yes, sir. When we went to the General Film to make arrangements for from twenty to thirty-five reels, the manager told me that "Mr. Redmond has a contract with us for so much money for so many reels, and now if you want thirty-five reels, your fifth reel possibly quite often will be a repeater on his house," and I took my service with that understanding, but they were to keep me in the clear as far as time was concerned as much as they could, which they have done up to the present time.

2 Q. What do you mean by "keeping you in the clear in respect to time?" A. When I repeat on Mr. Redmond they go way back and give me, not his latest run, but some he ran back thirty or sixty or ninety days ago. He has been running the service quite a while.

Q. In your experience in the motion picture business here in St. Louis, have you had any experience or any knowledge of competition between houses where one was owned or partially owned by the manager of an exchange or by an exchange owner? A. I certainly did, and paid for my experience.

3 Q. Tell us something about that? A. I mentioned in my testimony a moment ago of running the McKinley Theatre, at 2212 South Jefferson Street. Just below me, I think one block and a half, or two blocks, is the Gravoise Theatre, owned by what is called or was called at that time The Crawford Syndicate. At this time I was running the Swanson-Crawford program of independent pictures, not paying only for what was called the "commercial service," why, I had to repeat everything after the Gravoise Theatre. I do not expect I had in all the time I was there, ten clear reels that had not been shown at the Gravoise before that.

4 Q. With what exchange was The Crawford Syndicate affiliated? A. The Swanson-Crawford.

Q. Have you had any experience as to competition or knowledge of competition where there were two theatres using licensed programs, one of which was owned or partially owned by the representative or owner of a licensed exchange? A. Not that I ever knew of, no, sir.

Cross examination by Mr. GROSVENOR:

1

Q. Where did you get these films you displayed in East St. Louis? A. Of the General Film Company on Grand and Olive, it is on Olive off of Grand.

Q. They are shipped from St. Louis, Missouri, over to that theatre in East St. Louis, Illinois? A. No, sir, my boy—I have a film boy who comes over every morning and gets the program, gets the films.

Q. And they are taken from St. Louis, Missouri, over to East St. Louis, Illinois? A. Yes, sir.

Q. And then, the next day when you are through with them you send them back? A. That same night after the performance my boy brings them back to the exchange.

2

Q. You get all your films in that way? A. Yes, sir.

At 11:45 o'clock A. M., the hearing was adjourned until 2 o'clock P. M., to be resumed at the Planters' Hotel, St. Louis, Mo.

ST. LOUIS, MISSOURI, January 9, 1914.

3

The hearings were resumed pursuant to adjournment at 2:00 o'clock P. M., January 9, 1914, at the Planters' Hotel, St. Louis, Mo.

The appearances were the same as at the morning session.

Thereupon, JACOB WARNER, the next witness produced by defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

4

Q. Where do you live, Mr. Warner? A. 4910 Laclede Avenue, St. Louis, Missouri.

Q. How long have you lived in St. Louis? A. Off and on for about thirty years.

Q. In what business are you engaged? A. The moving picture business, at the present time, the theatrical business.

Q. Are you an exhibitor of motion pictures? A. Yes, sir.

- 1 Q. Do you own or operate a motion picture theatre?
A. One theatre at the present time.
Q. Will you tell us the name of that theatre and give us the seating capacity of it? A. The LaFayette Theatre, seven hundred.
Q. Have you owned any other theatres at any time, and by that I mean motion picture theatres? A. I was connected with a corporation that owned them, yes, sir.
Q. What corporation was it? A. The Independence Amusement Company.
- 2 Q. Were you a stockholder in the Independence Amusement Company? A. Yes, sir.
Q. Were you an officer? A. Yes, sir.
Q. What theatre or theatres did the Independence Amusement Company, of which you were a stockholder and officer, operate? A. The Washington Theatre, located on Delmar and Kings Highway. The LaFayette Theatre, at 1645 South Jefferson Street.
Q. Any other? A. That is all.
Q. What was the seating capacity of the Washington Theatre? A. Seven hundred and fifty.
- 3 Q. What was the seating capacity of the LaFayette Theatre? A. Seven hundred.
Q. When did the Independence Amusement Company operate the Washington Theatre? A. Back, somewhere in 1909. I think the early part of it.
Q. When did the Independence Amusement Company cease to operate the Washington Theatre? A. In 1912 I think.
Q. What kind of motion pictures did the Washington theatre use, licensed or unlicensed? A. It was called licensed.
- 4 Q. From what source did the Washington Theatre obtain its licensed motion pictures? A. From the O. T. Crawford Film Exchange at that time.
Q. During the period that the Washington Theatre was obtaining licensed motion pictures from the O. T. Crawford Film Exchange what competition did it have in its immediate vicinity? A. We had the Delmar, called the Delmar Theatre, a small place called the Vaudette, and the Novelty Theatre.
Q. Who owns the Delmar Theatre? A. Mr. Pike.

Q. Was the Delmar Theatre in existence when the Washington Theatre began to operate? A. No, sir. 1

Q. When did the Delmar Theatre come into existence? A. Within possibly six months or seven months, something like that.

Q. And by that do you mean within six or seven months after you started the Washington Theatre? A. Yes, sir.

Q. What position did the Delmar Theatre occupy with reference to the Washington Theatre? A. The locality, you mean?

Q. Yes? A. Nearly opposite.

Q. On the same street? A. Yes, sir. 2

Q. What kind of motion picture program did the Delmar Theatre use, licensed or unlicensed? A. The licensed.

Q. From what source did the Delmar Theatre obtain its motion picture programs? A. It was called the Western Exchange.

Q. Where was the Western Exchange located? A. In the City of St. Louis.

Q. Was the Western Exchange a competitor of the O. T. Crawford exchange? A. Yes, sir.

Q. After the Delmar Theatre was started and after it began actively to compete with the Washington Theatre, what experience did you have with reference to conflicting programs of licensed motion pictures? A. We found that we had to repeat very often, and if we did pick a program the chances were that he probably would get the program there before we did, and sometimes, of course, it was the other way. 3

Q. Did you find that this had any effect upon your business? A. It did.

Q. What effect did it have? A. It had a tendency to decrease the patronage. 4

Q. Did the patronage in fact fall off? A. Yes, sir.

Q. And while it was falling off was this condition of duplication of programs going on? A. Yes, sir.

Q. What did you do, if anything, Mr. Warner, to cure this condition and to prevent this duplication of programs? A. We finally changed our service and received it from Kansas City, from the Yale Film Company.

Q. And was it the licensed service that you received from Kansas City from the Yale Film Exchange? A. Yes, sir.

1 Q. What was the result of this change; what occurred after you made the change? A. We were a little ahead of the other party.

Q. You had a program in advance of Mr. Pike at the Delmar Theatre? A. Yes, sir.

Q. Did you continue to have a program in advance of his? A. Yes, sir.

Q. Did the competition continue with the Delmar Theatre? A. Yes, sir.

Q. What became of the Washington Theatre? A. It finally went out of business.

2 Q. Why did it go out of business? A. He could not stand the competition because he had comparatively the same line of stuff, and he also had vaudeville, and we were strictly a picture house.

Q. After you began to take service for the Washington Theatre from the Yale Film Exchange in Kansas City, did the Western Exchange do anything to assist Mr. Pike in getting an earlier program in the Delmar Theatre? A. They tried, of course, to keep ahead.

3 Q. Did you still find that the unfortunate condition of duplicating programs continued more or less? A. Yes, sir.

Q. During the time you were having this spirited competition with the Delmar Theatre were you still operating the Lafayette Theatre? A. Yes, sir.

Q. And is that still in existence? A. Yes, sir.

Q. Are you still operating it? A. Yes, sir.

Q. Did you, at the time you changed from the O. T. Crawford Film Exchange to the Yale Film Exchange in Kansas City also change with respect to the Lafayette Theatre? A. We did.

4 Q. What, if anything, did you do with respect to getting a more satisfactory service from the O. T. Crawford Film Exchange before you began to take service for your two theatres from the Yale Exchange? A. I went to Mr. Crawford, and explained the condition, and offered him more money, and he stated to me that it was impossible for him to do that because he had theatres he had to protect, and Mr. Keller, who was then in charge of the office, threatened us that if we did he would put a first run service in a certain house right there close to us, and put us out of business.

Q. If you did what? A. If we changed the service and went to Kansas City or anywhere else.

Q. Did you tell him that you contemplated going to Kansas City? A. Yes, sir.

Q. And did this statement from Mr. Keller follow your statement that you intended to go to Kansas City for service? A. Yes, sir.

Q. What was the house that he referred to? A. The Vaudette.

Q. Did anything occur with respect to the service in the Vaudette house after you began to take service for your two branches from Kansas City? A. He carried out his threat and put in a change of program every night with first run.

Q. Do you recall about what month it was when the Washington Theatre closed its doors? A. Somewhere in November, 1910, I think.

Q. After the General Film Company began to operate an exchange in St. Louis, did you take service from it? A. Yes, sir.

Q. For what theatre or theatres did you take service? A. The Lafayette.

Q. After you began to take service from the General Film Company for your Lafayette Theatre, did you find it possible to keep clear from your immediate competitors? A. Oh, yes.

Q. Did you have any competition in that immediate vicinity? A. Yes.

Q. What theatres were competing with you at that time? A. The McKinley Theatre, the Knickerbocker Theatre, and several small places. I don't remember their names.

Q. Were all or any of these, licensed houses? A. Yes, sir.

Q. How many of them were licensed houses, do you recall? A. Those two that I speak of.

Q. The two that you have named were licensed houses? A. Yes.

Q. And did you have any conflict of program with those two houses after the General Film Company began to serve you? A. None whatever.

Q. Do you know whether or not the General Film Company branch that was serving you was also serving the two houses that you have named? A. Yes, sir.

1 Q. During the period that you have been conversant with the motion picture exhibition business, have you known the prices that were charged for motion picture service? A. To an extent.

Q. Have you known of the prices that were charged at your own houses? A. Oh, yes.

Q. Are you still familiar with that phase of your business? A. Yes, sir.

2 Q. Now, Mr. Warner, what is the situation today with respect to the price that you pay for a motion picture service at the Lafayette Theatre as compared to the price that you paid in 1910? A. Percentage or actual price?

Q. Actual prices? A. We paid \$125, as near as I can recollect, at that time, for 12 reels. We are now receiving 21 reels for \$50.

Q. When did you pay the price of \$125 for 12 reels to which you have referred? A. Somewhere from the time of—the latter part of 1909 to the early part of 1910. Of course, I cannot exactly remember the dates.

3 Q. Was it prior to the advent of the General Film Company in this field? A. At any rate it was within a short time after.

Q. Do you remember what price you were paying to the Yale Film Exchange for your service? A. \$90.

Q. How many reels did that comprise? A. At that time there was a certain price, and we divided it accordingly. For the service. That was our own price, really, at the time.

Q. Was that a less price or a higher price than you were paying to the O. T. Crawford Exchange? A. A less price.

Q. What had you been paying the O. T. Crawford Exchange? A. Anywhere from \$95 to \$110.

4 Q. What projecting machines do you use? A. Motograph.

Q. Have you used any other? A. No, sir.

Q. Do the independent exchanges solicit you for business? A. Yes, sir.

Q. Do they promise you a complete program? A. Well, I cannot particularly say. Complete I guess as far as it is.

Q. Do they offer you any inducements in the way of price? A. Yes.

Mr. GROSVENOR: No cross examination.

Thereupon, N. H. GIBBONS, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. Lawrence, Kansas.

Q. How long have you been a resident of Lawrence, Kansas? A. Well, I have been since 1908.

Q. In what business are you engaged? A. In the motion picture exhibiting business.

Q. How long have you been an exhibitor of motion pictures in Lawrence? A. Since November, 1908.

Q. And do you own or operate a theatre there? A. I do.

Q. More than one? A. Two at the present.

Q. How long have you operated two theatres? A. I have operated one since 1908 and the other since September, 1911.

Q. What theatre have you operated since 1908? A. The Aurora.

Q. What is the seating capacity of the Aurora Theatre? A. Three hundred.

Q. What is the name of the other theatre? A. The Grand.

Q. What is the seating capacity of the Grand? A. Three hundred and sixty to three hundred and seventy.

Q. Mr. Gibbons, what kind of service do you use in your two theatres, the licensed or the unlicensed? A. Licensed.

Q. How long have you used the licensed service in each of these houses, the Aurora and the Grand? A. Since the establishment of the Motion Picture Patents Company in the Aurora, and since the operation of the Grand.

Q. From what exchange are you securing your service? A. From the General Film Company, Kansas City, Missouri.

Q. From what exchange were you securing service for the Aurora Theatre in 1909 and in the early part of 1910, prior to the formation of the General Film Company, and before it began to operate in your field? A. The Yale Company.

Q. And how long did you remain with the Yale Film Exchange? A. Until they were taken over by the General Film Company, or until the name was changed. I have been with the same company all the time.

Q. How many theatres are there in Lawrence at the pres-

- 1 ent, and by that I mean motion picture houses? A. Four.
- Q. What are the other two? A. The Patee and the Oread.
- Q. Do the Patee and the Oread use the licensed or unlicensed film? A. They do not use the licensed, they use the other.
- Q. What kind of service does the Patee Theatre use? A. The Universal.
- Q. And what kind of service does the Oread Theatre use?
- A. The Mutual.
- 2 Q. What is the seating capacity of the Patee Theatre?
- A. I should judge about three hundred.
- Q. What is the seating capacity of the Oread Theatre?
- A. About two hundred and sixty-five, I heard them say.
- Q. Are these two theatres in active business in competition there? A. They are.
- Q. Mr. Gibbons, when you were taking your motion picture service from the Yale Film Exchange in the latter part of 1909 and the **early part of 1910** did you have any difficulty in determining upon a program and announcing and advertising it in advance? A. Yes, I did. I could not arrange to do so.
- 3 Q. Did you try to arrange that matter? A. Yes, we always tried to arrange to book films ahead, you know, and try to get them and was unable to do so.
- Q. What was the situation with respect to getting your program; when did you get the motion pictures that you were to exhibit? A. I had to wait until the day the pictures were exhibited at my theatres before I could know what they were.
- 4 Q. After you began to take service from the General Film Company what was your experience with respect to fixing upon a definite program and announcing it in advance? A. I have been able to arrange my program from a week to two weeks in advance and can announce it and be assured of receiving it.
- Q. Have you done that? A. I have been doing it.
- Q. Have you been receiving your programs in accordance with the announcements you have been making, and the selections you have made? A. Yes, sir.
- Q. Do you select your program yourself or permit the exchange to select it for you? A. I select the majority of the pictures I show.

Q. And do you find that the exchange, the General Film Exchange, co-operates with you in arranging a program to your satisfaction? A. They do. 1

Q. During the period you have been an exhibitor in Lawrence have you been familiar with the price of motion picture service in that town? A. I know what I pay.

Q. How do the prices that you pay now for the licensed motion picture service compare with the prices that you paid in the latter part of 1909 and the early part of 1910 when you were taking service from the Yale Film Exchange? A. Well, I pay practically the same amount of money for the service. 2

Q. What service did you use in the Aurora Theatre in 1909 and the early part of 1910, and what did you pay for it? A. I was using two reels to a program, changed three times a week.

Q. That would be about six reels a week? A. Yes, sir. I paid from forty-five to fifty-five dollars.

Q. What service are you now using in your Aurora Theatre, and what do you pay for it? A. I am using twelve reels, four to a program, changed three times a week and pay forty dollars.

Q. Are you solicited from time to time by representatives of the independent exchanges? A. I have been. 3

Q. Do they offer you any inducements in the way of price? A. They have.

Q. Do they offer you a complete program? A. Yes, sir.

Q. What kind of projecting machine do you use in your theatre? A. At the present I am using a Powers 6A.

Q. What have you been using? A. The different models of Edison, and the Motiograph.

Q. Any others? A. Two models of Edison and the Motiograph, and a Powers No. 6 and a Powers No. 6A. 4

Cross examination by Mr. GROSVENOR:

Q. These films which you display daily are shipped to you from the branch of the General Film Company at Kansas City, Missouri? A. They are.

Q. Your place of business is in Lawrence, Kansas? A. Yes, sir, forty miles from Kansas City.

Q. And when you are through with them at the end of each day you ship them back to Kansas City? A. Yes, sir.

- 1 JOSEPH L. STIEBEL, the next witness produced on behalf of the defendants, being of lawful age, duly sworn by the Examiner, deposes as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. Kansas City, Missouri.

Q. How long have you been a resident of that town? A. About 31 years.

Q. In what business are you now? A. In the motion picture business.

- 2 Q. Are you operating a theatre in Kansas City? A. Yes.

Q. What is the name, and what is the seating capacity of your theatre? A. I am the manager of the Apollo Theatre, operated by the Apollo Amusement Company. The capacity of it is approximately 800 seats.

Q. Are you interested in any other theatre? A. No, sir.

Q. How long have you been interested in the Apollo Theatre? A. Almost two years.

Q. At what time did you assume the management of it, if you recall? A. I bought the property about two years ago, and got possession of it; oh, probably three months after.

- 3 Q. Have you been operating it ever since? A. Yes, sir.

Q. What service, licensed or unlicensed, do you use in the Apollo Theatre? A. I am using the General Film service.

Q. That is, service that you get from the General Film Company? A. Yes, sir.

Q. From what branch or office do you obtain it? A. From the Kansas City branch.

- 4 Q. During the time that you have been operating the Apollo Theatre, have you had occasion to familiarize yourself with the prices of independent service and the prices of licensed service to a theatre such as you now own? A. Yes, sir. Before that as well.

Q. Did you study the proposition of prices before you began to operate the Apollo Theatre? A. Yes, sir.

Q. Did you investigate the prices of independent service, and the prices of licensed service? A. Yes, sir.

Q. Did the unlicensed exchanges offer you a complete service for the Apollo Theatre? A. At the time we operated

that theatre, we were using 21 reels, three a day. They 1
offered me the same service.

Q. How did the prices of unlicensed service compare with the prices for licensed service which were quoted you at the time you were making an investigation of prices with the intent of furnishing a service for your theatre?

A. There was very little difference in the price for the same age of stuff.

Q. What price are you now paying for the service that you use at the Apollo Theatre? A. Well, it varies between \$91.00 and \$115.00 a week.

Q. What is the magnitude of the service that you use? 2
A. I use five reels a day, 35 reels a week.

Q. Do you select your own program, or do you permit the exchange to select it for you? A. Well, I virtually select my program.

Q. Do you give some time and attention to it? A. Yes, sir; all my time and attention.

Q. I mean to the program? A. Yes, sir.

Q. Do you mean to say that you give most of your time and attention to selecting the program? A. No, I mean that I give all my time and attention to the business connected with my theatre, which is principally the selection of the program and looking after the comfort of my patrons. 3

Q. Do you obtain a satisfactory program from the Kansas City branch of the General Film Company? A. Eminently satisfactory.

Q. Do you find it possible to get the program that you determine upon in advance, and the one that you think you want for your customers? A. Do I do what?

Q. Do you find it possible to get the program that you determine upon in advance, and that you feel is desirable for your customer? A. Why, I always get my program five or six days in advance of the time that my new show opens. My week begins on Sunday. I get my program sometimes as early as Wednesday morning. It is necessary because I get out a printed program, and I must get that to the printer in time for distribution Saturday morning. 4

Q. Do you get the sort of program that you desire? A. Yes, sir.

Q. Do you find that the General Film Exchange is will-

1 ing to co-operate with you in securing the kind of program you want for your customers? A. In every way. Any objection I make to a film is remedied by them and others supplied.

Q. Were you ever connected with any other theatre at any time? A. Yes, sir.

Q. What was the name of that theatre? A. The Orpheum Theatre.

Q. Where was the Orpheum Theatre located? A. 9th and May, Kansas City.

2 Q. How large a house was it? A. The seating capacity was 1,690.

Q. What kind of a house was it at the time you were connected with it? A. A first class vaudeville theatre.

Q. Was it exclusively vaudeville, or did it combine some motion picture acts with its program? A. It always had one or two motion pictures as an act.

Q. During what period were you with the Orpheum Theatre? A. Between 1907 and 1910.

3 Q. What kind of motion pictures did you display in the Orpheum Theatre during that period? A. Well, the pictures were gotten from Chicago.

Q. Do you know from what exchange? A. They were gotten from a man by the name of Spoor. I think it was G. K. Spoor & Company.

Q. Now, during that period while you were getting pictures from G. K. Spoor & Company, in Chicago, did you ever have any difficulty about getting the names of the pictures in advance so that you could advertise them with certainty to your customers? A. I don't recall as to that. I know that we would request a certain kind of picture, and that was the kind of picture that they sent us.

4 Q. You designated it by classification rather than by title? A. Yes, sir.

Q. Was there any special reason why you went to Chicago and took the service of Spoor? A. There was an exchange at Kansas City, but it did not give satisfaction. I did not know of this until after I came to the Orpheum. Our films always arrived by express on Sunday morning, and on this particular Sunday morning, the delivery had not been made, and we were a little bit nervous, and after the manager had sent out to the express company, it occurred to me as being rather strange that he should

send to Chicago for his stuff when they had an exchange at Kansas City, and I asked him the reason— 1

Mr. GROSVENOR: I object to this statement as hearsay.

The Witness: He stated that the service in Kansas City was unreliable, and we could not get what we wanted even after it was promised.

Thereupon CORNELIUS D. STRUBLE, the next witness produced by the defendants, of lawful age, being first duly sworn, deposed as follows: 2

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. Kansas City, Missouri.

Q. How long have you lived there? A. Well, I have lived there at different times. The last time since about February 1st, 1912.

Q. Before that time where did you live? A. Oklahoma City, Oklahoma. 3

Q. How long did you live in Oklahoma City? A. From August, 1908, until February 1st, 1912.

Q. From August, 1908, to February, 1912, while you were residing in Oklahoma City what was your business? A. Manager of a film exchange.

Q. What was the name of that film exchange? A. I was manager of two different exchanges, one, the Monarch Film Exchange, and the other, the United Motion Picture Company.

Q. During what period were you manager of the Monarch Film Exchange? A. From August, 1908, until sometime in June, 1910, I believe. 4

Q. During what period were you the manager of the United Motion Picture Company? A. From June, 1910, until in January, 1912.

Q. Was the Monarch Film Exchange a branch of any other exchange? A. It was a branch of the Yale Film Exchange at Kansas City.

Q. Who was the owner of the Yale Film Exchange at

1 Kansis City? A. It was owned by a corporation, the Yale Film Exchange Company.

 Q. Was the Monarch Film Exchange in existence when you went to Oklahoma City? A. No, sir.

 Q. Did you start that branch? A. I did.

 Q. Then were you continually in the motion picture business from August, 1908, to January, 1912? A. I was.

 Q. Did the Monarch Film Exchange deal in licensed or unlicensed motion pictures? A. Licensed motion pictures.

2 Q. Did the United Motion Picture Company deal in licensed or unlicensed motion pictures? A. Unlicensed.

 Q. What became of the United Motion Picture Company? A. It was absorbed by the Universal Film & Supply Company.

 Q. Is it still in existence? A. Yes, sir, that is I am informed it has been since I left there.

 Q. Is it still in existence? A. The office is still in existence.

 Q. Is there a motion picture exchange at the same place at the present time? A. I am informed there is.
3 I have not been there since I left in January, 1912.

 Q. While you were the manager of the Monarch Film Exchange, did you have any difficulty with respect to sub-renting on the part of your exhibitors? A. Yes, sir; we did, a great deal.

 Q. Will you tell us something about your experience in that respect? A. Well, I don't know that I can cite any particular instance. We were continually bothered about it. It was pretty hard to get evidence on the exhibitors. They would always, when we caught them, they would try to get out of it by saying that they had merely borrowed a program when their program didn't come in, or something of that sort, and where we found an exhibitor loaning films or shipping them to some other people for which he was not paying for the service we would either make him pay for the program, or discontinue the service to him.
4

 Q. Did your Monarch Film Exchange at any time violate the release day rule in an effort to favor customers? A. Yes, sir, we have.

 Q. What would that consist of? A. Well, that would consist of sending a reel out to an exhibitor before the advertised release date, that is, before the date set by the manufacturer when it was supposed to be released.

Q. Did you do that frequently or infrequently? A. Well, I would not say we did it frequently, although there was a time about, well, I should say in the Summer of 1909, when we were forced to do it by the competition at different times.

1

Q. You mean by that, competition in violating the release day rule? A. Competition in violating the rule.

Q. Did you find that other exchanges followed the same practice? A. They did. We never took the initiative in doing it, but where we had to do it to protect our customers, we did.

2

Q. Was there any specific town or exchange with which you had special trouble of this sort? A. I could mention Fort Worth, Texas. We had accounts in that town, and the J. D. Wheelan Company of Dallas, also had accounts there, and we were forced to ship the films there ahead of the release date in order to meet the competition.

Q. Licensed film or unlicensed film? A. Licensed.

Q. Did you have any experience with any other exchange violating the release day rule? A. Yes, sir; we had the same trouble with the Mitchell Film Exchange, which was then located in Little Rock.

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Q. Did this happen on more than one occasion with the Mitchell Exchange at Little Rock? A. On a great many occasions. Also, we had the same trouble with the Oklahoma City Film Exchange, located in Oklahoma City.

Q. That was an institution in your own city? A. Yes, sir.

Q. Do you recall that the Motion Picture Patents Company at one time collected the royalties for the use of the projecting machines directly from the exhibitors, and subsequently had the exchanges make the collections? A. I do, sir.

4

Q. Was that change favored by you? A. Well, I don't recall how we took it at the time.

Q. Did any inconvenience arise at the beginning from the fact that the Patents Company was collecting the royalties from the exhibitors? A. Yes, sir. It was rather inconvenient for the exchange, for the reason that we never knew when an exhibitor's royalty was paid, and when it was not, and some of them would claim they had paid their royalties, and possibly they had not, and we had

1 no way of knowing, and we never knew for certain when an exhibitor's royalties were not paid and when they were.

Q. Did the change in the rule relieve the situation in this respect? A. Yes, sir, it did. We knew when the exhibitor's royalty was paid when we collected it ourselves.

Q. At the time that you were in charge of the Monarch Film Exchange, did you find that the producers of licensed motion pictures were competing with one another?

2 A. We did. We were not buying the entire output of the licensed manufacturers, and we were continually being solicited from manufacturers we didn't buy from to take their films.

Q. Did you find that they were also competing with one another with respect to the exhibitors as well as with respect to the exchanges? A. They were continuously advertising to the exhibitors both through the newspapers and through personal letters, telling them to ask for their brand of film.

3 Q. Has that been the situation since you have been in the film business? A. You mean during the entire period that I have been in the business?

Q. Yes. A. Well, to a large extent, yes.

Q. Are you still in the motion picture business? A. I am.

Q. What are you doing at the present time? A. I am with the General Film Company's Kansas City branch.

Q. How long have you been with the Kansas City branch of the General Film Company? A. Since February, 1912.

Q. What position do you occupy with the Kansas City branch? A. Assistant manager.

4 Q. Do you find at the present time that the producers of licensed motion pictures are competing with one another? A. They are, I believe; that is, they appear to be.

Q. Do they urge upon your exchange the desirability of their productions? A. They are constantly writing us to buy more of their brands of films, and those whose films we are not buying are continually soliciting us to take their releases.

Q. Is your exchange permitted to select the motion pictures that it deems desirable for its customers? A. We are.

We place our own orders for film and make our own cancellations. 1

Q. At the time you were managing the Monarch Film Exchange, did you have any experience of a competing exchange offering an exhibitor especially good service if he would leave your exchange and go to it? A. We have had them offer service of later date than we were giving, for less money, if that is what you mean.

Q. I don't exactly mean that. I mean did you have any experience of a rival exchange threatening an exhibitor unless he would take the service from them, that they would give an exceptionally better service to one of his competitors? And thereby drive him from the field? A. Well, I recollect one instance. It was in the town of Enid, Oklahoma. There were three picture houses in that town at one time, and we were serving one, and the Little Rock Exchange was serving two, and the Little Rock Exchange went to our customer and threatened to put in first-run films, using the entire output of the licensed manufacturers, giving it to their two houses, if our customer did not switch to them. They knew at this time that all of our first run films were tied up by contract at Oklahoma City, and we could not protect our customer if we wanted to, and they did take away our account. 2 3

Q. What exchange was that? A. The Mitchell Film Exchange.

Q. At the time you were managing the Monarch Film Exchange, did you find it possible to supply a definite fixed program to the exhibitors so that they could announce and advertise the same in advance? A. We never tried it, no, sir.

Q. Did you promise them definite fixed programs in advance, special service? A. Well, I don't exactly understand what you mean by special service. 4

Q. I mean, did you promise them sufficiently good treatment and consideration, and a service which would be favorable to them and would please their customers? A. In soliciting the business of a theatre, we usually promised them releases of a certain age, and we gave it to them as nearly as we could.

Q. But did you find that it was usually impossible to comply with the promises that were made? A. Well, we sometimes could comply with them, and sometimes we could not.

1 Q. Was there anything fixed, definite or certain about your being able to carry out the promises that were made? A. Well, it depended naturally upon the promptness of other customers in returning their used programs. At that time it was very uncertain.

Q. At the present time, are you able to supply an exhibitor with a program so that he may know of it in advance, and advertise it? A. We did. We give practically all of the customers their programs—that is, advance notice of their programs.

2 Q. How much time do they have? A. Well, from a week to ten days.

Q. Does your exchange co-operate with the exhibitors in endeavoring to give them the sort of program they desire? A. We do. Just as far as possible.

MR. GROSVENOR: No cross examination.

Whereupon, at 3:10 P. M. on this Friday, the 9th day of January, 1914, the hearing is adjourned until Saturday, January 10th, 1914, at 10:30 A. M., at Planters' Hotel, St. Louis, Missouri.

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IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA, Petitioner,	No. 889.
<i>v.</i>	
MOTION PICTURE PATENTS Co. and others, Defendants.	Sept. Sess., 1912.

ST. LOUIS, MISSOURI, January 10, 1914.

The hearings were resumed pursuant to adjournment at 10:30 o'clock A. M. on January 10, 1914, at the Planters' Hotel, St. Louis, Missouri.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

Present also, JOSEPH R. DARLING, Esq., Special Agent.

CHARLES F. KINGSLEY, Esq., appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

Thereupon, JOSEPH MOGLER, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Mogler? A. No. 1635 South Broadway.

1 Q. How long have you been a resident of St. Louis? A. I have been a resident of St. Louis since 1895.

Q. In what business are you engaged? A. I am in the motion picture business.

Q. As an exhibitor? A. Yes, sir.

Q. How long have you been a motion picture exhibitor? A. I went into the business on the fourth day of May, 1907.

Q. What theatre do you own? A. The Family North. I call it the Family Theatre now, but at one time I had two places and I called it "North."

2 Q. How long have you had the Family Theatre? A. Since the fourth day of May, 1907.

Q. What is the seating capacity of the Family Theatre? A. About twelve hundred.

Q. What kind of motion pictures do you show in the Family Theatre? The licensed or the unlicensed? A. The licensed and the unlicensed also.

Q. What does your program chiefly consist of, the licensed or the unlicensed? A. Well, the licensed.

Q. From what rental exchange do you obtain your licensed motion pictures for use in the Family Theatre? A.

3 At present?

Q. Yes. A. The General Film Company.

Q. How long have you been taking motion pictures from the General Film Company? A. Well, ever since they were organized here.

Q. By that do you mean ever since they came into the St. Louis field? A. Yes, sir.

Q. Prior to renting motion pictures from the General Film Company from what rental exchange did you secure your licensed programs? A. From the Crawford Film Exchange.

4 Q. During the period that you have been operating the Family Theatre have you operated any other theatre? A. I formerly had the Family South, that is on Cherokee and Iowa Streets, 2727 Cherokee.

Q. What was the seating capacity of the Family Theatre, South? A. That was about seven hundred.

Q. How long did you operate that theatre? A. I operated that one about four years.

Q. What did you do with it? A. It was a tent, and a party bought the ground under me and I had to dispose of my place.

Q. During the period you have operated your present theatre, and since May 4th, 1907, have you been familiar with the prices of licensed service to motion picture houses in the City of St. Louis? A. Yes, sir. 1

Q. How do the prices that you are now paying for your licensed service secured from the General Film Company compare with the prices that you paid for the licensed service secured from the Crawford Exchange? A. I do not find any change at all, about the same.

Q. You say the prices range about the same? A. Yes, sir.

Q. How long have you been using the unlicensed pictures in your program? A. Well, I have used them right along. When I want a picture, one that I felt like that I wanted to try out, why I did it, so as to be satisfactory to myself, to see whether it would take with my people. I make it a study to see what my people want. 2

Q. And have you from time to time during the past three or four years used the unlicensed pictures? A. Yes, sir.

Q. Do you select complete programs for your Family Theatre? A. Yes, sir.

Q. Do you choose them yourself? A. Yes, sir.

Q. Are you able to advertise and announce a program in advance? A. Yes, sir, as far as is necessary to satisfy my people. 3

Q. How long a time in advance can you announce your program? A. I never want to announce it more than for a period of four or five days. To announce it too long in advance it becomes monotonous to my people, and it is not necessary for me in the neighborhood I am in.

Q. Do you find that the General Film Company co-operates with you in furnishing a program such as you desire for your customers? A. I have never had any trouble.

Q. Mr. Mogler, do you have any unlicensed theatre in your neighborhood or vicinity? A. There is the Dreamland Theatre near me, about six blocks away. 4

Q. Do you know the seating capacity of the Dreamland Theatre? A. About twelve hundred or thirteen hundred, somewhere along there.

Q. Does it run an unlicensed program altogether? A. Yes, sir.

Q. Do you notice any competition; is there any competition between you and that theatre? A. I have got to go some to keep up with them for they put on an awfully

1 strong program there. I always feel out to find out whether I get some of their Keystones to mix up with my program.

Q. What do you mean by "Keystones?" A. Well, the people seem that they lean towards that Keystone. It is a comedy film, and it is a rousing comedy, like a film that I put on here about two months ago that they called "The Riot" and it was a riot. People came to me and said "it is a picture you ought to put on, it is great," and I put it on, and it was great.

2 Q. You found it was a good drawing card? A. Yes, sir. Then there is even another exhibitor north of me—I am at 3900 North and this is at 5300 North, and he calls that theatre the Lowell Theatre, owned by Blumenthal.

Q. He runs the unlicensed service? A. Yes, sir, and he saw it up there and it was a great picture.

Q. Are you solicited from time to time by representatives of the unlicensed exchanges to change your service and use the unlicensed program? A. They call on me, and I run their service too, that is special service.

3 Q. Do the representatives of the unlicensed exchanges offer to furnish you with a complete program if you will make the change? A. Well, the Mutual has asked me for a split service.

Q. And by that do you mean a service that would be part independent and part licensed? A. Yes, sir.

Q. How do the prices which they quote to you compare with the prices— A. He never would quote prices, that is for a split service, but when I go in there and get a reel he would charge me five dollars for it, and I thought that was a little high and that made me a little sore against them for doing that. I didn't think that was just right.

4 Q. In your capacity as an exhibitor of motion pictures do you observe whether or not the unlicensed producers of motion pictures are showing enterprise and progress in their work? A. Generally the Association pictures I must say I am very familiar with, and I can say they are very entertaining to my people. I judge it from the way my people patronize them.

Q. Do you mean the licensed pictures are showing improvement? A. Yes, sir, owing to the fact of them catering—and then their pictures that they get out, they are very careful with, and they are not suggestive. I find on the other hand that the other people are a little bit radical about

it, what I mean is they do not hold themselves in line to be careful as to what they are putting out, to be careful with the public as a general thing. 1

Q. You don't think they show the same care and discrimination in the choice of subjects? A. I know it, and that is what has kept me in line with the Association pictures because the people were very careful in looking at a picture that was anywise suggestive. They never say much to me but would not compliment on it when they would go out.

Q. Do you find that the moral quality of the pictures you are showing is very satisfactory? A. Yes, sir. And I show to an awful lot of children, and I have got to be careful. That is why I have made a success, if I do say so, I had to be careful. 2

Q. When you pick out independent pictures do you show the same care and discrimination that you exercise as to your program in picking out the licensed pictures? A. Yes, sir. I will tell you of an instance. They tried to get me to run Sappho. This Sappho though was by the American Feature Film Company, they had it. Now the word "Sappho" I didn't like it, and I didn't think it would exactly appeal to my people. This American Feature Film Company people, they claimed that they had cut out any parts that were not exactly just right, and that it was all right, and that other exhibitors run it, and why should I not run it, and I told them that I didn't like the idea of that name of it, and I went there to look at it which they insisted on me doing, but I didn't believe I wanted to run it. 3

Q. The title itself was sufficient to induce you to reject it no matter what censorship they might have exercised? A. Yes, sir.

Q. Mr. Mogler, what projecting machine to you use? A. The Edison-B. 4

Q. Does that comprise all the types of projecting machines that you have used in your family theatres? A. I have used the Lubin, that was years ago.

MR. GROSVENOR: No cross examination.

- 1 HENRY R. SLOCUM, the next witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposes as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. Fairfield, Illinois.

Q. In what business are you engaged? A. Travelling representative of the St. Louis branch of the General Film Company.

- 2 Q. How long have you been a representative of the St. Louis branch of the General Film Company? A. Since the first of January of last year.

Q. Before that, in what business were you engaged? A. Travelling representative—well, just before I came with the General, for a few months when I was off the road I was an exhibitor in Flora, Illinois. Just for a short time.

Q. Before you went into the exhibition business in Flora, Illinois, in what business were you engaged? A. Travelling representative of the Standard Film Exchange at Chicago.

- 3 Q. And how long were you with the Standard Film Exchange at Chicago? A. About ten months, I was there.

Q. And prior to that, in what business were you engaged? A. Travelling representative of the Swanson-Crawford Film Exchange at St. Louis.

Q. How long were you with the Swanson-Crawford Film Exchange at St. Louis? A. Well, I was with the O. T. Crawford Film Exchange Company and the Swanson Film Exchange Company together about four and a half or five years. About five years I would say.

Q. Were you travelling representative of the O. T. Crawford Film Exchange Company? A. Yes, sir.

- 4 Q. Were you with the O. T. Crawford Film Exchange Company of St. Louis at the time of the cancellation of its license on or about July 19th, 1910? A. Yes, sir.

Q. And how long prior to that time had you been a travelling representative of the O. T. Crawford Film Exchange Company? A. With the O. T. Crawford, about three and a half years, and the Swanson-Crawford Company possibly a year and a half. The two exchanges together, I would say about five years.

Q. Do you recall whether or not the Western Film

Exchange Company's license was cancelled on or about July 19th, 1910? A. Yes, sir. To the best of my recollection, that is about the date. 1

Q. Did you continue in the employ of the O. T. Crawford Film Exchange Company after the cancellation of its license? A. Yes, sir.

Q. What did you do after that? What work did you do— A. I was travelling salesman. Soliciting.

Q. You continued right on the road as before? A. Yes, sir.

Q. Did the O. T. Crawford Film Exchange Company continue in business? A. They—yes, we continued right along. 2

Q. Did they change the name under which they operated? A. Yes.

Q. What was the new name of the O. T. Crawford Film Exchange Company after July 19th, 1910? A. Swanson-Crawford Film Exchange Company.

Q. What exchanges, if any, combined with the O. T. Crawford Film Exchange Company after July 19th, 1910, to form the Swanson-Crawford Film Exchange Company? A. The O. T. Crawford Film Exchange Company, Western Film Exchange, the William Swanson Film Exchange, and Wagner Film Exchange. 3

Q. Prior to July 19th, 1910, did you know the amount of film that the O. T. Crawford Film Exchange Company was renting from the licensed producers? A. You mean at the time they lost their license?

Q. No. Before July 19th, 1910, the date of the cancellation of the license of the O. T. Crawford Film Exchange Company, did you know the amount of film that the O. T. Crawford Film Exchange Company was renting from the licensed producers of motion pictures? A. From 18 to 21—well, there were more than that, 21 or 22 reels a week. Something in that neighborhood. An average, I would say, of 21 reels. 4

Q. At page 1238, Vol. II, of the printed record in this case, Mr. J. C. Graham on direct examination was asked this question: "From what manufacturers were the Western Film Exchange and the O. T. Crawford Film Exchange obtaining films in the month that they were cancelled, or in the early part of 1910? A. The O. T. Crawford Film Exchange

1 was receiving more film than the Western for the reason that their rentals were higher, and they were able to carry a more complete program. The average purchases of the Western at that time were from 12 to 15 reels weekly, and the purchases of the O. T. Crawford Exchange ran from 18 to 21 reels a week as I recall it now." Does that refresh your memory as to what the O. T. Crawford Exchange was purchasing? A. Yes, sir.

Q. And your answer is— A. From 18 to 21 reels I would say was about the average.

2 Q. And did you know at that time, what the Western Film Exchange were receiving? A. Well, I knew they were not buying as many reels as we were buying, because we were doing a larger business, and required more. I would say they were buying 12 or 15 reels. Five or 6 reels less than our exchange.

Q. In 1910, prior to the cancellation of the licenses of the O. T. Crawford Film Exchange and of the Western Film Exchange, were the relations between those two exchanges friendly or unfriendly? A. Oh, very friendly.

3 Q. Who was the manager of the Western Film Exchange at that time? A. Mr. J. C. Graham.

Q. On cross examination of Mr. J. C. Graham in this case, at page 1239, Vol. II of the record, he was asked this question: "Did you occupy most of your time in the affairs of this one, of which you were officially manager? A. Most of my time, yes. I represented 75% of the stock in the Crawford Exchange. Q. That was the Western Film Exchange?

A. The one that I was manager of, yes. I represented 75% of the stock of the Crawford Exchange, consequently, was in direct touch with their business operations." Did you know at that time that there was a more or less community of interest between the O. T. Crawford Film Exchange Company and the Western Film Exchange? A. Yes, sir.

4 Q. At that time, Mr. Slocum, was there any interchange of reels of film between the O. T. Crawford Film Exchange Company and the Western Film Exchange Company, to satisfy the demands of the programs of the two exchanges? A. Yes, they changed reels—they would get a reel from us, and we would get one from them, and so on; to complete their programs.

Q. Did you continue on the road for the Swanson-Crawford Film Exchange Company? A. Yes, sir.

Q. At the time that the Swanson-Crawford Film Exchange Company was organized, did it have any stock of motion pictures on hand? A. A working stock?

Q. Yes. A. Oh, yes. Yes. Quite a large stock.

Q. What stock did it have? What did it comprise? A. In the way of reels, and so forth?

Q. Yes. The amount and quality and character of the reels? And approximately, the number? A. Well, we had at—I could not say as to the number of reels we had. We had a very large stock and the very latest releases up until the time they lost their license, I understand.

2

Q. But you had a large stock of film on hand? A. Oh, yes; I would say safely running up to three thousand reels.

Q. This stock comprised, did it not, all the stock of the O. T. Crawford Film Exchange Company and the Western Company, which they had on hand July 19th, 1910? A. Yes, sir.

Q. And what was the cash business, to the best of your knowledge, that was being done by the O. T. Crawford Film Exchange Company at the time of its cancellation?

3

Mr. GROSVENOR: I object. This witness has not been shown to have had any familiarity with the books, or in regard to the amount of business done by the Crawford Company. He was merely, as I understand, the traveling representative, or a traveling representative.

By Mr. KINGSLEY:

Q. Were you back and forth, in and out of St. Louis at that time? A. Yes, sir, every week—

4

Q. In 1910? A. Yes, sir. Most every week.

Q. Did you report to the O. T. Crawford Film Exchange Company each week that you returned here? A. Yes, sir.

Q. Did you keep in touch with the business of the O. T. Crawford Film Exchange Company? A. Why, I kept in mind pretty much all the time what they were doing, yes.

- 1 Q. Did you know what customers they were serving in the territory through which they traveled? A. In my territory, yes, sir.

Mr. GROSVENOR: Did you have the whole territory?

The Witness: No, sir; not all of the territory.

By Mr. KINGSLEY:

- 2 Q. Did you know the customers that you were serving in your own territory? A. Yes, sir.

Q. Did you know the customers that were being served in all the territory? A. Yes, sir; most of them.

Q. Did you know approximately what the business of the O. T. Crawford Film Exchange Company was? A. I would say we were doing a business at that time of easily three thousand dollars a week.

Q. And what was the Western Film Exchange Company doing at that time? A. Probably a little more than half of ours. I would give a guess at eighteen hundred

- 3 dollars.

Q. After you went on the road for the Swanson-Crawford Film Exchange Company, did you offer any other pictures to exhibitors besides the licensed pictures that you had in stock? A. We were getting independent productions then, I know. We would offer them that.

Q. Did the Swanson-Crawford Film Exchange Company take the independent service immediately upon beginning business in this field? A. Yes, sir, that is my recollection.

- 4 Q. How many reels of film did they take per week of the independent productions? A. I will have to stop and think.

Q. Take all the time you like. A. That is back some time. I don't know. I would say that they were taking practically all of the independent productions.

Q. Practically all? A. Yes, sir, and which I would say at that time was around twenty reels a week. I think they were releasing about that much. I am not sure, but I would say that was what it was.

Q. Did you offer to the exhibitors whom you solicited at that time in the field, a complete program? A. Yes, sir;

a non-repeating program or a complete program. What we called a complete program, non-conflicting program. 1

Q. You offered them a complete or non-repeating program? A. Yes, sir.

Q. Of what did this program consist, the independent unlicensed film exclusively or the unlicensed and licensed film in combination? A. We were offering them our independent productions and what we had in stock of the licensed reels.

Q. What difficulties did you have in taking on new customers and in holding the old customers after you went on the road for the Swanson-Crawford Film Exchange Company? A. In my particular territory I held the most of my customers, and my business grew. 2

Q. Did you keep in touch with the progress of the business of the Swanson-Crawford Film Exchange Company? A. Yes, sir.

Q. While you were with them? A. Yes, sir.

Q. What was the situation after two months of active canvassing and operations in the field? A. We were doing a very nice business.

Q. Do you recall how much business you were doing after sixty days? A. You mean what would I estimate it at? 3

Q. Yes? A. I would say the office was doing a business of four thousand dollars a week, safely.

Q. How long did you remain with the Swanson-Crawford Film Exchange Company after July 19th, 1910—but I think we have already covered that? A. About a year and a half, I think it was.

Q. You have already told us about that? A. Yes, sir.

Q. During that time did your business prosper? A. Yes, sir, I should think so.

Q. Did you continue to take on new customers? A. Yes, sir, all the time. 4

Q. Were you able to furnish new customers with a complete program of unlicensed film, if they wished it? A. Yes, sir.

Q. Did you have any difficulty in supplying new customers with complete programs? A. No, sir.

Q. Did you have any difficulty in supplying them with balanced programs? A. No, sir.

Q. How many reels were necessary to constitute a non-

1 conflicting program in St. Louis in 1910 or a non-repeating program? A. What would you call a "complete program" for a house, a non-repeating service on the place?

Q. Yes. A. In the City of St. Louis, I can't say. I didn't have any of the city trade but I would say, yes, that it consisted of two or three reels a day. Most of the houses ran three reels a day in 1910.

Q. And that made a satisfactory program? A. Yes, sir.

2 Q. How many reels would a rental exchange be compelled to buy or to rent each week in order to furnish a program such as you have described? A. They would have to buy twenty-one reels, if putting on three a day, seven days in the week for the city, and for the country, eighteen reels.

Q. So that if the Western Film Exchange was only renting twelve to fifteen reels it did not have sufficient reels to supply a program such as you have described? A. No, sir. They would have to give a repeating program.

Q. And they would be compelled either to furnish a repeating program or to obtain reels of film from some other exchange? A. Yes, sir.

3 Q. Or some other source? A. Yes, sir. Basing that, you understand, on a man running first run service, if he requires three reels a day it would take from eighteen to twenty-one of those reels to give him a non-repeating program.

Q. Was the O. T. Crawford Film Exchange Company leasing more than enough reels for such a program at that time? A. That is the O. T. Crawford you speak of?

Q. Was the O. T. Crawford Film Exchange Company leasing more than twenty-one reels? A. Yes, we were leasing from eighteen to twenty-four reels. Yes, I would say they were.

4 Q. Mr. Slocum, do you have competition with the unlicensed exchanges in your field at the present time? A. Yes, sir.

Q. What is the situation in that respect? A. Well, in what way do you mean?

Q. I would like to know first, whether they furnish a complete program? A. Yes, sir.

Q. And what company or companies furnish that complete program? A. The Mutual Film Corporation, and the Universal, are our opposition companies.

Q. Do they have exchanges here? A. Yes, sir. 1

Q. How many? A. Each have an exchange.

Q. How many releases do the Universal furnish each week? A. I think they are releasing now twenty-seven reels or twenty-eight reels, something like that.

Q. How many subjects is the Mutual releasing now? A. About the same.

Q. What is the total number or the aggregate number of releases— A. That is not subjects. They are not releasing twenty-eight subjects, but twenty-eight reels.

Q. How many do both companies release at the present time? A. The two independents together? 2

Q. Yes. A. You can figure on twenty-eight reels each. Fifty-five, fifty-six, or fifty-eight, somewhere in that neighborhood.

Q. How many reels is the General Film Company releasing at the present time? A. From fifty to fifty-two.

Q. During the years you have been travelling in this territory have you observed whether or not there have been changes in the exhibitors? A. Oh, yes, very largely so.

Q. In your territory have you kept in touch with the exhibitors? A. Yes, sir. 3

Q. Have you known of the changes that have occurred from time to time in the various houses which you have served? A. Yes, sir.

Q. Now, what percentage would you say of the exhibitors you were serving in 1910 and the latter part of 1909 are still in the business? A. Why, I think twenty per cent. would cover it easily.

Q. Do you solicit houses now which are using the unlicensed service? A. Yes, sir.

Q. And try to get them to take the licensed service? A. Yes, sir. 4

Q. And do you occasionally get such a house? A. Yes, sir.

Q. Do the representatives of the unlicensed exchanges solicit the houses which you are serving? A. Yes, sir.

Q. Do they occasionally get some of your customers away from you? A. Yes, sir.

Q. How does the record stand with respect to this competition, do you get more houses from them than they get from you or are the figures about equal? A. It is about equal. They are growing some, of course.

1 Q. Is there any competition for the business of a new customer or a new house? A. Yes, sir.

Q. In your territory are there any big houses which are using the unlicensed service? A. Yes, sir, quite a number.

Q. Can you name some of them and give us the seating capacity of the different houses and the places of location?

A. Well, speaking of big houses, I suppose you have reference to a leading theatre and a popular theatre?

Q. Yes. A. Koontz Bros., Grand Theatre, Springfield, Illinois, is using the Mutual program and the Universal.

2 Q. What is the seating capacity of it? A. I will have to give a guess on it. About four hundred. In some of the leading theatres in the smaller cities, the capacity is not very large, although they have the leading theatre. Mr. Gus. Karosods, he is using the Universal program, and Bernstein & Sheppard, of Springfield, Illinois—at the Palace Theatre, or at the Capitol. Kimball Theatre at Cairo, Illinois, I would say is the leading theatre of that city and is using the independent program.

3 Q. What is the seating capacity of the Capitol and the Kimball? A. In Springfield?

Q. Yes. A. About 400 for the Kimball and I would say about seven hundred at the Cairo. Those we consider pretty fair size houses in the smaller cities.

Q. How long were you connected with the Standard Film Exchange at Chicago? A. About nine months.

Q. Who was the manager? A. Mr. Joseph Hopp.

Q. Were you with the Standard Film Exchange when Mr. Hopp gave up his license? A. No, I went with him after that. They were an independent exchange when I went with them.

4 Q. Do you know whether or not he voluntarily gave up his license? A. No, I don't know. That was some year and a half after 1910 when the Swanson-Crawford was formed.

Q. Was the Standard Film Exchange a prosperous concern when you were with it? A. Yes, sir, very much so.

Q. Were they competing actively for business? A. Yes, sir.

Q. What sort of program did they offer—prospective customers? A. When I was with the Standard Film Exchange Mr. Hopp was buying from twenty-four to thirty reels of film per week.

Q. Unlicensed film? A. Yes, sir.

1

Q. And did you take on new customers from time to time? A. All the time.

Q. Did this business increase or diminish while you were with him? A. My business got better all the time. Of course, in our business on the road it is up and down.

Q. You had very good success? A. I felt so.

JOSEPH M. CUMMINGS, the next witness produced on behalf of the defendants, of lawful age, being first duly sworn by the Examiner, deposes as follows:

2

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. Dallas, Texas.

Q. In what business are you engaged, Mr. Cummings?
A. Representative for the Receiver for the General Film Company in the State of Texas.

Q. Is the business and property of the General Film Company in the State of Texas now in the hands of a receivership? A. It is, yes, sir.

Q. Are you the Receiver? A. No, sir.

3

Q. Who is the Receiver? A. H. A. Wroe of Austin.

Q. What relationship do you bear to the Receiver in respect to the business of the receivership? A. As he was not a resident of Dallas, and had very important business in Austin, some 200 miles away, he got me to go up there and take charge of the business as resident manager or as representative, whatever you may call it.

Q. When was the receivership for the General Film Company's property and business in the State of Texas ordered? A. October 18th, 1912.

Q. Since that time have you been continuously in charge of the property and business of the General Film Company in the State of Texas? A. Yes, sir; that is, as representative of the Receiver.

4

Q. Have you personally been transacting the business for the Receiver in the management of the property and business of the General Film Company, since that time? A. Yes, sir. I have been continuously there except when called away on business.

Q. Had you been in the motion picture business at any

1 time prior to the undertaking of this duty? A. Not before that, sir. I knew nothing at all about the practical working of an exchange.

Q. Since you took charge of the property and business and assets of the General Film Company in the State of Texas on behalf of the receivership, have you made a study of the motion picture business? A. A very close study.

Q. Have you endeavored to familiarize yourself with its various ramifications and its development? A. I have.
2 All the details.

Mr. GROSVENOR: You mean the details of the distribution of the pictures? Not the details of the making of the pictures?

The Witness: I beg your pardon. No, sir; not only about the details of the distribution, but naturally, just from a matter of curiosity, I tried to make a study of all conditions. The relation of the General Film Company to the customers—from the first moment I got in there.

Q. Have you as representative of the Receiver, conducted
3 an active campaign for business in the State of Texas, during the months that you have been in charge of the General Film Company's assets and business? A. I have, sir.

Q. Have you endeavored to increase the business of the General Film Company under the receivership? A. I have, sir.

Q. Have you succeeded in doing so? A. I have, sir.

Q. To what extent have you increased the business of the General Film Company in the State of Texas while acting as representative for the Receiver? A. Well, we came
4 in on one Saturday, I remember, and the reports of that day stand out very clear in my recollection. The reports showed that we were doing a weekly business—and later I examined other reports behind that—and the average business around that period was between fifty-five hundred and six thousand dollars a week. For the last six months we have been doing an average business of ten thousand dollars a week, and we are still going up steadily.

Q. How many exhibitors was the General Film Company serving from its Dallas office at the time you took possession? A. Between 160 and 165. That number fluctuates.

Q. How many are you now serving from the Dallas office? A. In round numbers, 275. 1

Q. Have you since that time established another office, at Houston? A. I have, sir.

Q. Does the 275 exhibitors whom you testified you were serving, include those who are served from both offices? A. It does.

Q. Have you made a canvass, or had a canvass made, of the State of Texas, to learn how many motion picture theatres there are in that State? A. Some two months ago I had one of my men make a careful study of how many theatres there were in the State as far as we could get at the data, and the figures reported to me were 503. 2

Q. What kind of houses were these 503? A. They included merely the houses which were showing continuously either six days or seven days. In some parts of our State, they keep open on Sundays; and in other parts, they do not.

Q. This enumeration of 503 motion picture houses did not include any houses, so far as you know, and did not include, if your instructions were carried out, any houses which were only showing from time to time? A. As far as I know, they did not, sir.

Q. How many reels of film were being taken by the General Film Company in Texas at the time you took possession of its property assets and business? A. Thirty-six weekly. The entire output at that time. 3

Q. Have you increased the number of reels that you lease to exhibitors, since that time? A. We are buying 49 to-day, per week.

Q. Did you find this necessary in order to serve the increased number of exhibitors whom you have taken on? A. Yes, sir.

Q. Would you say that the fact that you had leased more reels had assisted you in providing suitable programs for the additional exhibitors whom you have taken on? A. Very materially. Without the additional output, we could not have taken on the houses at all. I might say that up to December 20th, we were buying 63 reels, which included the Exclusive Service. When that was discontinued, we had to discontinue them, of course. 4

Q. Does the figures of 275 customers include any who are taking less than a complete week's service? A. Yes. I should say there are ten what we call special exchange li-

1 censes, who only have one show a week, and we only furnish three reels a week to them. My recollection is there are about ten such.

Q. But the 503 motion picture houses you have enumerated do not include any of the special exchange licenses?

A. No. Not so far as I know.

2 Q. Are there any additional licensed exhibitors in the State of Texas served with licensed motion pictures, other than those included in the 275 you have mentioned? A. Yes. By special order of the Court, certain towns in northern Texas were exempted from the jurisdiction of the Receiver, and certain towns in southern Texas came under the same order, and by that order, the Oklahoma City house was empowered to continue furnishing those in northern Texas, and the New Orleans house, those in southern Texas, on the theory that they could be served better by those nearer houses than by us, and that arrangement is in force to this day.

3 Q. How many of such houses are there? A. Well, speaking in round numbers, I should say ten, and my recollection is that there are only one or two now in northern Texas served by Oklahoma City, and possibly not more than six served by New Orleans in the southern part.

Q. At the time you took possession of the business for the Receiver, did the General Film Company have any travelling representative in the field? A. Yes, sir.

Q. How many? A. One.

Q. Did you continue to have a travelling representative in the field? A. Yes, sir.

4 Q. Did you increase your force in the field? A. As soon as the Houston office was opened in May, I put another man on to cover that territory—to be exact, the travelling representative in all of Texas for our exchange was given charge of the Houston office, which made me put a new man on the territory which we still served, and he appointed his man in the southern part of the State.

Q. Do you have competition in Texas with unlicensed exchanges? A. Yes, sir.

Q. What unlicensed exchanges are there in the State of Texas? A. The Mutual Corporation and the Universal, which has been known by the name of the Texas Film Corporation, and the Consolidated. It is generally known as the Universal now, however.

Q. Do they have more than one office in Texas? A. Yes, 1
sir; each of them has more than one.

Q. Will you tell us how their offices are distributed in the State of Texas? A. Well, they have an office in Oklahoma City, which serves a portion of northern Texas. One or both of them has an office in Sweetwater, known as a junk exchange, and one or both has a junk exchange at Amarillo, and one of them has an office in San Antonio. There is other competition besides the two so-called services.

Q. Do each of these independent organizations have offices in Dallas? A. Yes, sir.

Q. And these exchanges in Dallas, are they in competition with you? A. Yes, sir. 2

Q. What other independent competition do you have in Texas? A. There is an exchange called the United States Amusement Company in Fort Worth. There is another exchange, in San Antonio, whose name I do not recall. There is the Robertson-Windham Exchange in Houston, and in Dallas there are the Southern Feature Film Program Association, and the Thrash Feature Film Company, the Texas Feature Film Company, and the Eclectic Feature Film Company. There may be others by this time.

Q. You have been away some 48 hours? A. I have been away 24 hours. 3

Q. Mr. Cummings, how many reels of film are released by the independent exchanges? A. The Mutual and the Consolidated—that is more familiar to me—the Consolidated—than the Universal, were handling or buying twenty-one reels a week each, and now I think are buying twenty-eight each.

Q. By that you mean the name is more familiar to you? A. When we first took charge there they were the Universal, or known as the Consolidated, or Universal, and then somehow or other they changed the title to the Consolidated and Universal together, going under both names, and the name Consolidated stuck to me better than the name Universal. 4

Q. So that these two are releasing fifty-six reels per week? A. Yes, sir.

Q. Do you know how many reels are being released by the other independent exchanges? A. Well, I don't think there is any other service represented in Texas that furnishes a program at all. These feature film companies do not furnish a program, a complete program.

1 Q. When you took possession of the property, assets and business of the General Film Company in Texas did you examine its books, or did you examine its organization with a view of determining what changes were necessary so that you might conduct the business in a better way and a more efficient manner? A. I examined the system of bookkeeping, and I actually examined the books. I certainly examined the system of dealing with the exhibitors.

2 Q. Had you ever had any acquaintance with the business of accounting? A. Yes, I was a bookkeeper for eleven years, and have made more or less a study of that. I have acted as an expert accountant at times.

Q. And after having examined the bookkeeping system in the General Film Company's office did you find it necessary to change anything? A. Not a thing.

3 Q. Did you find it a comprehensive and a satisfactory and a clear system? A. Very, indeed. If you will allow me to add, that even since I have been in the office the General Film Company has issued orders from time to time which makes the system even more comprehensive than at that time—it is very much more comprehensive in keeping in weekly touch, almost daily touch with the business being done by our exchange at least, and I presume by the others.

Q. And have you made these changes in accordance with the suggestions of the General Film Company? A. Every one of them.

Q. In dealing with the exhibitors have you followed out the same system of collections that you found in existence in the office of the General Film Company when you took possession of it? A. Yes, the same system.

4 Q. What changes have you made, if any? A. There has been a slight change by order of the head office, the New York office. The method when I came in was to expect the exhibitor to pay for his service, for the week's previous service, by the following Wednesday. That was done in a great many cases voluntarily by the exhibitors, but I found there had been no particular pressure brought to bear on them to make them conform with that rule. About the first of August we were requested by the General Film Company to send our invoices in advance. In other words, every Saturday night we billed not for the week just closing, as had been the case, but for the week to come,

and the exhibitors were notified that the payments were expected by Friday of that week. That has been done, but as in the previous case there has been no particular insistence that this rule should be adhered to and really the customers are paying just as they have always done, which means they are probably a week behind time.

Q. Do you have any competition with the feature film service in Texas? A. Yes, sir.

Q. How does it affect your business? A. Well, it has taken one of the biggest theatres in Dallas away from the market for the regular—what I call the standard program. I call the standard program the daily releases of the reels.

Q. Do you handle any unlicensed film yourself at your exchange? A. No, sir, we do not.

Q. Do you know upon whose suggestion Mr. Wroe was appointed Receiver of the property, assets and business of the General Film Company in Texas? A. The Attorney General of Texas, I should say.

Q. Do you know whether or not he was appointed by agreement between the General Film Company and the Attorney General of the State of Texas, or merely upon the recommendation of the officials of the State of Texas? A. Merely upon the recommendation of the Attorney General of the State of Texas. The General Film Company knew nothing about the matter, I suppose.

Q. Now, acting as the representative of the Receiver were you directed to go on and make a vigorous campaign for business, and to operate the business of the General Film Company with the desire to conserve its assets and to strengthen its resources? A. The order of the Court, as I recall it, empowered the Receiver to take charge of and to conduct the business as he saw fit, to buy the reels in the open market as he saw fit, and to hire such employees, and so on, the usual thing, I think.

Q. I should gather that he was intended to conduct the business, but you have no doubt that the order of the Court gave the Receiver full power to go on and conduct the business according to his best judgment? A. Yes, sir, that is so.

Q. To use his best judgment, and his best judgment was that you should go on and actively compete for business in the State of Texas? A. Yes, sir.

1 Q. And this you have done consistently since that time?

A. Yes, sir.

Q. You have no other interest in the business of the General Film Company except to carry out the order of the Court in accordance with the spirit in which it was made?

A. No, sir. I am not an employe of the General Film Company.

Q. Have you come in personal contact with any considerable number of the exhibitors whom you are serving?

A. I hardly think there is one whom I do not know personally now.

2 Q. Have you made it a point to meet them personally, to listen to their statements, complaints and representations regarding the business? A. That is part of the daily grind.

Q. Have you had any experience of one theatre coming to you and offering you an additional price for service, providing you would take it away from its competitors?

A. Not one, but two.

Q. Will you tell us about that?

3 Mr. GROSVENOR: I object to this as immaterial.

4 The Witness: We were serving one theatre with 21 reels at Dallas, and two others with 14 each, making the full output of 49 reels. A new theatre was built by a man who was a very good friend and customer of ours. He already had theatres using the licensed service in Oklahoma City, in Houston and in Galveston, and in a way I suppose he thought he had a pull. He opened this new theatre, a hundred thousand dollar theatre, in Dallas, and he was very anxious to use the licensed service there. We were getting \$210 from the 21-reel theatre in Dallas. It was service equivalent to that that he wanted, and he offered us \$250 for that. He offered us more from time to time if we would cancel the service of the 21-reel house and give that to him—and I declined to do it. The other instance was in Houston. We were serving two houses there—

Q. There was another instance in Houston? A. Yes, sir.

Q. And a similar offer was made to you under similar conditions? A. Except the price was varied. It was not the same price.

Q. In investigating the business of the General Film Company, what did you learn about the methods of the company prior to the time of the receivership? A. I talked a great deal with Mr. Ezell—

Mr. GROSVENOR: I object to this witness giving testimony of what he talked about with another man.

The Witness: Mr. Ezell was the manager down in charge of the place, I believe for about fourteen months or longer. I questioned him very closely as to the policy he had pursued, and was glad to learn that he had acted in a fair, honest, straightforward way with the exhibitors; and as first one exhibitor and another came in, I managed to question them to find out whether Mr. Ezell's statements could be verified, and I have very strong evidence that he had so acted.

Q. What did you learn with reference to conditions before the time the General Film Company opened an office in Texas, from the exhibitor's standpoint? A. The best way to describe it, in my opinion, is chaotic. They did not know from week to week, where they stood; what price they would have to pay for material to keep their doors open; whether they would be able to keep their doors open or not; or what they would have. That was the condition generally.

Q. Did you find that the General Film Company had changed this condition for the better after coming to Texas, and prior to the time of the receivership? A. I learned that was the first they knew where they were at, to use a common expression. They knew that they could depend upon the program, and that when they made arrangements for a program, that program was reasonably certain as long as they wanted to take it. Previous to that time, I think they were rather afraid to invest any amount of money in a picture house. In the last year in Dallas, we have had four houses that cost over a hundred thousand dollars, a hundred thousand dollars or over, erected. And I am absolutely sure that those houses never would have been thought of under the old condition.

Q. In operating the business of the General Film Company on behalf of the Receiver, have you made any sub-

1 stantial changes or modifications in its general policy and plan of procedure? A. I have not made any substantial changes. I think I have intensified the policy which—if that word will be allowed—the policy that prevailed already, in other words, I think that my talks with the customers convinced me that they thought they were being treated squarely, and my endeavor has been to make them think they were being treated more than squarely.

2 Q. In making up a program of motion pictures for an exhibitor, do you put a different estimate as to the value upon the various pictures on the program? A. I do, yes, sir.

3 Q. Will you explain your theory and your practice in making up programs for motion picture exhibitors? A. Well, I know that the Vitagraph releases, for instance, are intensely popular. We have forty-nine reels. Our idea is to get two programs a day of three reels each. That is six for each, times seven days, makes 42. Now, we have 49 reels from which to select those two 21-reel programs. I did this very thing not two months ago, endeavored to put the releases one for one, the more popular releases, if there is one more popular than the others, put them in one program, and get one equally as popular in the other. That squares that off. Then we have what is left. Taking the more popular reels, and seeing that each program contains the same proportion of what I know is the more popular reels. I want to say one more thing. I abandoned the purchase of four more reels lately, because they were more unpopular, and they could do no good to either side.

4 Q. Now, after having prepared the program, you rent it as a complete program, do you not, in spite of the fact that you yourself put a different value upon the constituents of each program? A. Yes, if you will bear in mind that this division of program only becomes a point where we are selling two theatres. We try to have each theatre served on as nearly an impartial basis as possible. Where there is only one theatre being served in a town, it does not make very much difference from that man's standpoint what he gets, just as long as he gets good reels.

Cross examination by Mr. GROSVENOR:

1

Q. Mr. Cummings, how did a Receiver happen to be appointed to take charge of the General Film Company's property in Texas? I mean by that was the branch unsuccessful?

A. No, sir, it was on the allegation that it was violating the anti-trust laws of the State of Texas.

Q. The Receiver has had possession because the State of Texas brought a proceeding under the anti-trust laws of Texas? A. Yes, sir.

Q. And that Receiver has held possession for over a year? A. Fourteen months.

2

Q. You are the representative of the Receiver in active charge of the business? A. Yes, sir.

Q. So that, notwithstanding these findings or conclusions you have reached respecting its methods and policy that receivership continues? A. It is none of my business; it does.

Q. The receivership does continue? A. Yes, sir, at the present moment.

Q. Will you kindly send, to supplement your examination, copies of the several orders of the Court appointing the Receiver and defining his powers? You gave some evidence as to what those orders purported to contain on your direct examination, and I should like to examine the orders in full?

3

A. I will try my best to get copies, Mr. Grosvenor. I have none in my office.

Q. I mean send them from Texas. A. I mean I have none there.

Q. Have you a record of them? A. No, sir.

Q. How, then, could you testify on direct examination as to what they contained? A. I had read it.

Q. I thought you stated you had not read it? A. I said I have none in my office.

Q. Have you any in your office at Dallas? A. No, sir.

4

Q. The order of the Court is your authority for conducting business? A. The Receiver has them in his possession, and he is two hundred miles or more from me.

Q. Well, see if you cannot get a copy and send it in? A. I will do so with pleasure.

Q. Has any testimony been taken in that suit? A. No, sir.

- 1 Q. The suit was filed and the Receiver appointed the next day? A. I don't know about that. I only know the order was issued on the 18th of October, 1912, and that the Receiver took charge the next day.

Redirect examination by Mr. KINGSLEY:

Q. The Receiver is in charge, isn't he, pending the determination of this suit? A. Yes, sir.

- 2 Q. Are you conducting the business as ordered by the General Film Company at 200 Fifth Avenue, New York, or are you conducting it as the representative of the Receiver, and with his consent and under his instructions? A. As representative of the Receiver, with his consent, and under his direction.

Q. When you took possession of this office of the General Film Company in Texas, did you have any prejudice against the General Film Company? A. I had none whatever, sir.

- 3 Whereupon, at 1 o'clock P. M. on this Saturday, the 10th day of January, 1914, the hearings are adjourned until Monday the 12th day of January, 1914, at the Ansley Hotel, Atlanta, Georgia.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

1

<p style="text-align: center;">UNITED STATES OF AMERICA, Petitioner,</p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">MOTION PICTURE PATENTS Co. and others, Defendants.</p>	}	<p>No. 889.</p> <p>Sept. Sess., 1912.</p>
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ATLANTA, GEORGIA, January 12, 1914.

The hearings were resumed pursuant to adjournment at 10:30 o'clock A. M., January 12, 1914, at Hotel Ansley, Atlanta, Georgia.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

3

Present also, JOSEPH R. DARLING, Esq., Special Agent.

CHARLES F. KINGSLEY, Esq., appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

4

Thereupon, MAX MILDER, the next witness produced by the defendants, of lawful age, being first duly sworn, by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. New Orleans.

Q. How long have you lived in New Orleans? A. About nine months.

1 Q. Where did you live prior to that time? A. Cleveland, Ohio.

Q. In what business are you engaged now? A. Moving picture business.

Q. When did you first go into the moving picture business? A. Oh, it has been seven or eight years ago.

Q. Were you ever employed by the Lake Shore Film Exchange in Cleveland, Ohio? A. Yes, sir.

Q. When did you go to work for the Lake Shore Film Exchange? A. Almost four years ago.

2 Q. Who was the manager of the Lake Shore Film Exchange? A. Mr. Mandelbaum.

Q. What is his first name? A. E. Mandelbaum—Emanuel Mandelbaum.

Q. In what capacity were you employed by the Lake Shore Film Exchange? A. I had charge of the shipping department.

Q. Were you continually in charge of the Lake Shore Film Exchange shipping department until you left its employ? A. Yes, sir.

3 Q. Were you in charge of the shipping department of the Lake Shore Film Exchange at the time of the cancellation of its license? A. Yes.

Q. During the time that you were in charge of the shipping department of the Lake Shore Film Exchange in Cleveland, did that exchange ship motion pictures to Texas, and open an unlicensed exchange in Texas? A. Yes, sir.

Q. Was this prior to the cancellation of its license? A. Yes, sir.

Q. After the cancellation of the license of the Lake Shore Film Exchange in March, 1911, did you continue in the employ of the Lake Shore Film Exchange? A. Yes, sir.

4 Q. Did the Lake Shore Film Exchange go on and do business in the same field? A. Yes, sir.

Q. What arrangements were made for supplying motion pictures at the time of the cancellation of the license of the Lake Shore Film Exchange? A. They commenced buying the unlicensed releases of the independent films, and continued just the same as they had previously to that time.

Q. How many releases did the Lake Shore Film Exchange purchase from the unlicensed producers of motion pictures? A. I think about fourteen that they were buying at that time.

Q. You mean by that fourteen a week? A. Yes, sir.

Q. How many releases of unlicensed motion pictures per week were available at that time? A. I think there were at least twenty-five to twenty-eight reels available for use at that time.

Q. How long did you remain in the employment of the Lake Shore Film Exchange after the cancellation of the license in March, 1911? A. Oh, five or six months.

Q. Then what did you do? A. I went to the General at Columbus, Ohio.

Q. By "General" do you mean the General Film Company? A. Yes, sir.

Q. During the time that the Lake Shore Film Exchange was handling the licensed motion pictures did Mr. Emanuel Mandelbaum own or have an interest in any theatres in Cleveland, or its vicinity? A. Yes, sir, he operated I think five or six in Cleveland, and in suburban towns around Cleveland.

Q. What theatres did he have there the names of which you can now recall? A. He operated in connection with Mr. Schachtel, who was kind of an assistant manager of the Lake Shore Film Company, or assistant to Mr. Mandelbaum, and they operated in connection with each other, the Glen-side Theatre on Woodland Avenue, the American Theatre at Elyria, Ohio, forty-five miles from Cleveland, and had another theatre at Elyria.

Q. What work did Mr. Schachtel do for the Lake Shore Film Exchange as assistant manager? A. Mr. Schachtel solicited the business on the road for them, and endeavored to fix up the difficulties that arose between the customers and the exchange.

Q. You say Mr. Schachtel endeavored to fix up difficulties. What sort of difficulties do you refer to? A. Mr. Schachtel solicited the business on the road, and ordinarily promised more than he could give to them.

Q. As shipping clerk of the Lake Shore Film Exchange did you have any knowledge of the difficulties of fulfilling the contracts made by Mr. Schachtel on behalf of the exchange? A. The only thing I knew was that customers came in and would say they were promised a twenty-five day service, or a thirty day service, and they never gave that class of service.

Q. Was Mr. Schachtel interested in any of the theatres in

1 which Mr. Mandelbaum was interested? A. The Glenside, and the two theatres in Elyria, and also the Loraine at Cleveland was operated by them at that time.

Q. Did you receive any complaints from the managers of any of these theatres in which Mr. Mandelbaum and Mr. Schachtel were interested to the effect that they could not get the service that they were promised.

Mr. GROSVENOR: I object to that question as calling for the contents of documents, and as being hearsay.

2

By Mr. KINGSLEY:

Q. You may answer? A. No, sir. There was no chance for objection on the part of the managers. They received the chance to pick what they wanted.

Q. What sort of service was supplied to the theatres in which Mr. Schachtel and Mr. Mandelbaum were interested? A. I do not think there was any service designated for any of the houses, just the pictures they needed.

Q. They got what they wanted? A. Yes, sir.

3

Q. Did you ship it to them? A. Yes, sir. As a matter of fact I had charge of the American Theatre, at Elyria, for Mr. Mandelbaum.

Q. What kind of service were you giving the American Theatre? A. For fifty dollars we were giving it a service that was ordinarily worth a hundred dollars.

Q. After the cancellation of the license of the Lake Shore Film Exchange what supply of motion pictures did you have on hand with which to supply the exhibitors? A. We had the stock of licensed films that were left over after the cancellation, and the new films that we were purchasing at that time.

4

Q. Were these licensed films in the possession of the Lake Shore Film Exchange under the conditions of the license agreement? A. Yes, sir.

Q. Were they rented from the producers of the licensed pictures? A. To the best of my knowledge, that is the understanding.

Q. Is it your testimony that these motion pictures in the possession of the Lake Shore Film Exchange were leased to exhibitors instead of being shipped back according

to the terms of the license agreement which had been cancelled? 1

Mr. GROSVENOR: Objected to, as leading.

The Witness: Yes, sir.

By Mr. KINGSLEY:

Q. Were the licensed motion pictures in the stock of the Lake Shore Film Exchange which had been obtained from the producers of licensed motion pictures under the terms of the exchange license agreement shipped back to the producers of motion pictures? A. Not to my knowledge. 2

Q. After the cancellation of the license? A. No, sir.

Q. After leaving the Lake Shore Film Exchange where did you go? A. I went on the road for the General Film Company at Columbus.

Q. How long did you remain on the road for the General Film Company at Columbus? A. Almost a year.

Q. What territory did you cover at that time? A. Oh, a part of Indiana and a part of West Virginia.

Q. Did you find competition at that time in the field where you were travelling? A. Yes, sir. 3

Q. On the part of the unlicensed exchanges? A. You bet.

Q. What was the situation in that field with respect to the unlicensed exchanges offering complete programs of unlicensed pictures to the exhibitors? A. They offered complete programs to exhibitors in towns where they had their service upon the same basis that we were offering our programs in towns where we were not doing business.

Q. Did they have theatres to which they were supplying complete programs? A. I have never been in a town that they didn't have a town in the same field. 4

Q. Did they take away any business from the General Film Company at that time? A. Not only at that time, but they do it today.

Q. Did you, on your part, take away some business from them? A. Yes, sir; we tried to take all we could from them, and they tried to do likewise with our business.

Q. When was it you went to New Orleans? A. I left, I

1 think, Columbus, on March 10th, and got to New Orleans on the 13th, 1913.

Q. What position did you take in New Orleans? A. I went on the road for them.

Q. In what territory did you travel? A. For the General Film Company, New Orleans. The New Orleans branch of the General Film Company.

2 Q. What territory did you cover while travelling on the road as representative of the New Orleans branch of the General Film Company? A. I covered the State of Louisiana, one or two towns in Florida, a number of towns in Mississippi, Mobile, Alabama.

Q. How long a time were you on the road? A. Approximately two months.

Q. During that period, did you visit a large percentage of the customers of the New Orleans branch of the General Film Company? A. I covered the biggest part of the territory.

3 Q. Did you find competition in that territory on the part of unlicensed exchanges? A. Conditions were practically the same in every territory where I have ever been. There has been as much competition with the independent companies in this section as there was in the section I came from.

Q. After you ceased to travel for the New Orleans branch of the General Film Company, what position did you take? A. I was made manager of the New Orleans branch.

Q. And have you since that time been manager of the New Orleans branch of the General Film Company? A. Yes, sir.

4 Q. In your capacity as manager of the New Orleans branch of the General Film Company, have you come in contact with the exhibitors who are served by your exchange? A. The greater part of them, yes. The greater part of them.

Q. Have you come in personal contact with the larger part of them? A. Yes, sir. I know quite a good many of them.

Q. How many theatres are you serving? A. I should judge about 145.

Q. Will you tell us how these theatres are distributed in the territory served by the New Orleans branch of the

General Film Company? A. There is about forty of them in New Orleans alone. We have two in Mobile, a couple in Beaumont, Texas, two in Port Arthur, one in Natchez, Mississippi; two in Pensacola, Florida. All the towns between Mobile and New Orleans, such as Gulfport, Biloxi; we have one in Pass Christian—well, we have one, but they mix them there. They use both programs. That is not ours any more than the other people's. Ocean Springs we have one. Pascagoula, one; Bay St. Louis, one. And the rest are distributed throughout the State of Louisiana. That is practically the outside territory. 1

Q. With the exception of the theatres you have named in towns outside of the State of Louisiana, are the remainder of the theatres served by you, in Louisiana? A. Yes. 2

Q. And did you say that forty of those were in New Orleans? A. We have practically forty houses in New Orleans that we are supplying with service.

Q. Now, throughout that territory, how is the business divided, to the best of your judgment, between the unlicensed and the licensed exchanges? A. I think that the business is about evenly divided between the independent exchanges and the licensed exchanges. We possibly handle more business than any one individual exchange of the independents, but we are buying the double program. 3

Q. How many individual exchanges of independents are there in that district? A. The Mutual have an office, the Universal have an office, and in addition to that—

Q. Tell us where. In what place? A. The Universal Film Exchange operate an office in New Orleans, and the Mutual Company operate an office there. In addition to that, there are seven or eight feature film companies in New Orleans who handle business in that section of the country just the same as we do. 4

Q. Are there any large houses in New Orleans which use the unlicensed service exclusively? A. Two. There are four large houses in the City of New Orleans. Two of them are using licensed, and two are using independent service.

Q. In your territory, are there any towns in which the only service in the unlicensed service? A. Yes, sir.

Q. Will you tell us what those towns are, and also tell us something about the theatres in those towns? A. The

1 town of Placamon, there are two theatres operating with the Mutual program exclusively; the Opera House of the town seats 700. And a smaller picture show there called the Golden Rule, which operates occasionally. They are both owned by the same man, Lyman Delacroix. When he runs a show at the Golden Rule, he rings us up and gets three or four reels from us, but he runs the Mutual program exclusively in the large house. Gulfport has two houses, the larger of which is operated by independent service. In New Orleans the houses are about equally divided.

2 Q. How many theatres did you say you were serving in that territory? A. About 145.

Q. And how many theatres are there altogether in that territory, approximately? A. I think it will run close to 300 in my territory. The territory is not divided the same way with the independents as it is with the licensed exchanges. They have more territory than we have, but the number of shows in our territory that we are supplying and they are supplying will reach about 300 all told.

3 Q. What sort of theatres do you refer to in this list of 300? By that I mean are any of them occasional shows which are open weekly? A. The greater part of them are open daily. We have a number of them that are operated just once or twice a week, and so have the independents.

4 Q. When you were with the Lake Shore Film Exchange in Cleveland, what was the situation with respect to supplying exhibitors a fixed definite program in advance? A. There was absolutely no way that we could give a man with whom we were doing business, an advance program. A man would frequently write to us or call us up or come into the office to see us, and request a certain film for use at a given time, which he sometimes got and sometimes did not. It was an uncertainty. We could not guarantee anything at the time.

Q. What was the situation in this respect at the branch of the General Film Company in New Orleans when you went there? A. When I went to New Orleans, we operated what we term or call a schedule system of booking, which gives a man an opportunity to get a definite program for a week, or two or three, or as far ahead as we can get advance notice of the releases.

Q. What governs the price of motion pictures to the exhibitor? A. The age of the service.

Q. When you furnish a motion picture service to an ex-

hibitor, do you quote him a sum for a complete program? 1

A. Yes, sir.

Q. What does the ordinary program consist of? A. In our territory, 21 reels.

Q. How many subjects a day is that? A. Three subjects a day.

Q. In furnishing such a program, do you try to give him a balanced program? A. I try to balance every program for each man with whom we are doing business.

Q. What do you mean by balancing a program? A. Variety of subjects, such as comedies, dramas, Westerns, educational, scenic, topical. 2

Q. Would it be feasible, in your judgment, in making up such a program, to distinguish between the different pictures therein as to merit and desirability, and then fix different values upon each picture, and carry out the resulting bookkeeping problem?

Mr. GROSVENOR: I object to that as leading.

The Witness: It would be utterly impossible.

By Mr. KINGSLEY: 3

Q. Do you find it more feasible to furnish a program in the way you are now furnishing it? A. I think we are giving more satisfaction with the program we are furnishing now than we ever did before.

Q. Do you ever find that the exhibitors prefer the pictures of one producer over the pictures of another? A. Very frequently.

Q. Do they ever express such preferences to you? A. They frequently come in and ask for different makes.

Q. What do you do under such conditions? A. Try to give them what they ask for. 4

Q. Do the exhibitors ever object to a certain picture so positively that they prefer a picture in its place from another maker even though it be an older release? A. That happens frequently.

Q. In referring to the age of a motion picture, do you refer to the copy or to the subject? A. The subject.

Q. When an exhibitor selects a motion picture at your

1 exchange, does he pay any attention to the physical aspect and condition of the reel? A. Not at all.

Q. When an exhibitor selects a motion picture at your exchange, does he select the motion picture he wants by physical examination and inspection of the reels, or by stating the kind of play he desires, and the type of audiences he must amuse? A. By the plays he desires and the type of audiences he amuses.

2 Q. Do you know the rule which prevails in the unlicensed exchanges with respect to the price of motion pictures, and by that I mean, is it the same or a different rule from that which prevails in the licensed exchanges? A. Their rule is the same as ours.

Q. When numerous copies of a motion picture are in use in a given neighborhood, does it lose value more rapidly on that account? A. Yes, sir.

Q. What is the reason for that? A. The more people that see it, the less the picture is going to be worth.

Q. Would you say that if five copies were out, that the feasibility of exhibiting the subject would decrease more rapidly than if one copy of the subject was out? A. Yes, sir.

3 Q. Would you say that as the number of people who have seen a motion picture in a given territory, increases, the value diminishes? A. Yes, sir.

Q. Is the price of a copy which has never been in actual physical use determined by the release date? A. Yes, sir.

4 Q. As manager of the New Orleans branch of the General Film Company what authority is given you with respect to securing pictures and making up the programs? A. I have complete charge of the New Orleans office buying what I think are the best subjects that will please my customers, and cancelling the releases I feel I can't use. Since I have been in charge of the office I have never had any one call me for anything I have done from the New York office with reference to buying any particular makes. I buy just what I want, and discontinue or cancel the subjects I do not want.

Q. When you say you have never had anyone "call you," what do you mean by that? A. I have never been told what to buy and what not to buy. I have bought what my customers wanted down there, and have cancelled the subjects that they refused to use.

Q. Have you found it necessary to cut down your orders

to some of the producers? A. I have frequently cut them down. 1

Q. What is the situation at the present time with respect to the orders you send to the producers at your exchange?

A. I placed a standing order shortly before Christmas for certain makes, and cancelled it right after the first of the year on certain ones. I cancelled Monday's Edison.

Q. Did you substitute anything in place of the one you cancelled? A. I substituted a Pathe feature that we had not been buying previous to that time. There was a demand for multiple reels, and I cancelled the single reels and substituted the multiple reels. 2

Q. Are there any producers of licensed producers from whom you are not taking subjects at the present? A. I am not buying any from George Kleine, and I am not buying any of the Melies subjects.

Q. Do you find from time to time that the popularity of a brand of motion pictures increases or diminishes as the merit of the production increases or diminishes? A. Yes, sir.

Q. Do the licensed producers of motion pictures send advertising matter to you, calling your attention to the merit of their productions, and urging upon you the desirability of securing their productions? A. Every day in the week. 3

Q. Do you find that they are competing with one another as to the quality of their productions? A. Each one tries to put out better subjects than the other one does.

Q. Do you sell projecting machines at your exchange? A. Yes, sir.

Q. Do you find that the exhibitors when purchasing projecting machines at your exchange buy them because they are cheap, or because they are efficient and satisfactory? A. Because they are efficient and satisfactory. 4

Q. What is your experience with exhibitors with respect to their desire to buy the latest and most improved models of projecting machines? A. They show a desire to buy the best machine that is made, and with each change made on the machines the exhibitors try either to attach it to their machines or to trade in their old ones for the new ones.

Q. Is this regardless of any increase in price? A. They have never questioned the price on the machine, if the machine will do as we say it will do.

1 Cross examination by Mr. GROSVENOR:

Q. Mr. Milder, when you were with the Lake Shore Film Exchange, at Cleveland, did you have any interest in the business? A. Absolutely none.

Q. Or any share in the profits? A. No, sir.

Q. You were one of the employees? A. Yes, sir.

Q. Were you one of the important employees?

Mr. KINGSLEY: Objected to, as calling for the conclusion of the witness.

2 The Witness: I don't know whether I was important. I had charge of the shipping department. That was an important position around there so far as getting the shipments off to the exhibitors in time.

Q. Did you have anything to do with the booking? A. Of the films?

Q. Yes. A. No, sir.

Q. And by "in charge" of the shipment department you mean simply that you had charge of the expressmen, or to seeing that the films went out on time? A. Yes, sir, that they
3 went out on time, and seeing that the exhibitors were taken care of in the city.

Q. Did you have anything to do with the accounting department? A. No.

Q. You left the Lake Shore Film Exchange a few months after its license was cancelled, and went directly to the General Film Company? A. Yes, sir.

Q. And you have been in the employ of the General Film Company since that time? A. Yes, sir.

Q. Did you have anything to do with the negotiations with Mr. Kennedy regarding the sale of the Lake Shore Film
4 Exchange to the General Film Company? A. No, sir.

Q. Is it not a fact that shortly before the license of the Lake Shore Film Exchange was cancelled the General Film Company opened a branch office in Cleveland? A. Yes, sir.

Q. Today in your business as manager of the General Film Company's branch does not the larger part of your business consist of the leasing of the new films? A. What do you mean by that?

Q. If the question is not clear I will change it. How many new films, that is, new reels do you receive each week

from the various manufacturers who supply your branch at New Orleans? A. I buy forty-four reels a week. 1

Q. How large a supply of reels do you keep on hand? A. I keep a six months' supply on hand all the time.

Q. If the source of supply, namely, the forty-four new reels a week, were cut off, could you go on doing business for a very long time with the six months' supply that you retain? A. Yes, sir, I could cut the service down if I thought my business would not justify me buying as many reels as I do, and cut it to twenty-one and do business the same as we are doing with forty-four. 2

Q. You did not understand my question. If the total source of supply of your forty-four reels was cut off, so that you could get not a single further film, not one, from any of the ten licensed manufacturers, could you continue for a long period of time doing business with the six months' supply of reels you have on hand? A. Yes, sir, we could do it for some little time.

Q. For how long a time? A. It would be a hard matter to say. After all of the exhibitors in our territory would have used up those films it would not be any good in that immediate vicinity. 3

Q. It would have a very serious effect on your business would it not?

Mr. KINGSLEY: I object to the question, as speculative, immaterial, conjectural and hypothetical.

The Witness: I don't think we could last any length of time, if we didn't buy some new stock right along.

By Mr. GROSVENOR:

Q. When the Lake Shore Film Exchange license was cancelled, was not that exchange doing business in the same way that you are doing business, that is to say, it was receiving a daily or weekly supply of new films? A. Yes, sir. 4

Q. Was it possible for an exchange at that time any more than it is today to go on doing business with its customers for any length of time after its regular source of supply was cut off? A. They continued because they went out and bought other films. They bought other subjects

1 just the same as if they were the licensed films. They done business in the same manner as they had previously done business.

Q. Was not the business done at that time in the same way it is done today? A. Yes, sir.

Q. And it was just as important then to have a regular source of supply of films as it is today, is that not correct? A. Yes, sir.

2 Q. Is it not true that all the customers of the Lake Shore Film Company at the time its license was cancelled were using the licensed service? A. Yes, sir, all the customers of the Lake Shore Film Company were using the licensed service at the time.

Q. Did you go to the General Film Company at an advanced salary? A. No, I went at a reduction.

Q. Were you fired by the Lake Shore Film Company? A. No, sir.

3 Q. You went voluntarily to this other company at a reduced salary? A. Yes, because I knew I had a better opportunity. It was a larger concern, and it has been proven, and although the position was at a reduced salary, it has brought me more in the long run, and given me an opportunity to advance myself where I did not have the opportunity with the Lake Shore.

Q. The Lake Shore Film Company was doing business in one location, that is, at Cleveland? A. Oh, no, sir; they shipped films throughout Ohio, and they shipped some into Pennsylvania.

Q. And the Lake Shore Film Company was doing business, that is, you say it had an office in one place, namely, Cleveland? A. They had an office in Cleveland at that time.

4 Q. And you felt that to go with a company that was opening branches all over the United States you would have a larger opportunity? A. I felt that the larger concern would give me a better opportunity to advance myself.

Q. When you were with the Lake Shore Company when the customers came in, in regard to their service, in order to make bookings, did you deal with them? A. Frequently, yes, sir.

Q. And did you make the bookings? A. No, sir.

Q. If the Lake Shore Film Exchange promised an exhibitor a film on a definite date why was it not possible

for the exchange to fulfill its promise? A. Because they had no way of figuring whether or not—well, they had no system, they had no way of conducting their business that was accurate. They were very lax in the things that they did. If they booked a film to a man, say, for use on next Thursday, perhaps it was shipped out of town on Wednesday, and possibly they kept no record of it, and it went elsewhere, and it was not returned in time for use on Thursday.

Q. I am not asking you about what they did, but about the possibilities. Was it possible for the Lake Shore Film Company to supply a film on a definite date if it promised to do so?

Mr. KINGSLEY: One particular film?

The Witness: One particular film or program? They frequently promised a man a film on a certain day, and gave it to him.

By Mr. GROSVENOR:

Q. And was there anything to prevent them doing it? A. Except the system of doing business, the laxity in it. There was nothing to prevent them in doing it if they had carried out their promises.

Q. You didn't have charge of the booking, did you? A. No, sir.

Q. Are there any distinct territorial lines which separate the territory of your branch office of the General Film Company from the territory of the neighboring branches? A. We practically work the State of Louisiana only, with the exception of a few towns where shipments can be made better from our office than from the other offices.

Q. Have you made up any list of the theatres embraced in your territory? A. No, sir.

Q. How did you arrive at this number of three hundred that you testified to on direct examination? A. I have covered the territory, and I feel that I know there are an equivalent number of houses in the towns, or in the greater number of the towns that we are supplying, that are supplied by the other companies, and if our business would

1 approximate one hundred and forty-five it would run close to three hundred for the three different exchanges.

Q. You never added up the theatres? A. No, sir.

Q. Or made a list of them? A. No, sir. I have figured out on paper how many we were supplying, and how many were supplied by the other houses.

Q. Did you ever attempt to make a detailed list, giving the names of the theatres and the towns? A. No, sir.

2 Q. So that, when you testified as to one hundred and forty-five theatres that were served by you, you were testifying as to a definite number, the names of each of these theatres being known to you? A. We know the number of accounts that are on our books.

Q. And that is 145? A. Yes, sir. It fluctuates, it goes up and down each week. We lose some, and take on others, but at this time it is about 145.

Q. But in giving the figures, that is the one hundred and fifty-five, to make up the theatres, or to make up the three hundred, you were testifying not specifically, but based upon your opinion, is that right? A. Based upon my knowledge of the territory.

3 Q. But without making any detailed list or enumeration? A. I had no list to go by, no, sir.

Q. When you testified on direct examination that the age of the service governed the price to the exhibitor, what did you mean? A. Well, the newer the service the more the service is worth. It is worth more to a man when the service is new than it would be to him if it was really old.

Q. In other words, if you have five films of the same age, one of Edison, one of Essanay, one of the Biograph, one of the Vitagraph and one of Selig, you charge the same for each of those films which are of the same age? A. Yes, sir.

4 Q. And if two of those five films were older than the other three you would charge less for the use of those two? A. Yes, sir.

Q. There is then no competition in price? A. The prices are about the same.

Q. Between the manufacturers? A. You mean between our exchange and the manufacturers?

Q. Well in the licensed films of these ten licensed manufacturers you make no distinction in price between the makes? A. No, sir.

Q. It is the age alone that determines the price? A. Yes, sir. 1

Q. Now, isn't it also a fact that in buying or renting these films from the ten manufacturers you pay the same to each manufacturer per foot? A. Yes, sir.

Q. Is there competition as to quality between the manufacturers? A. Each one tries to put out better subjects than the other one, and each one boosts their own subjects, and naturally want to sell their own goods.

Q. Is there any competition as to price? A. I think the prices are the same.

Q. Then there is no competition as to price, is there? 2

Mr. KINGSLEY: Objected to, as calling for the opinion of the witness.

The Witness: I think the prices are the same.

By Mr. GROSVENOR:

Q. Does your branch of the General Film Company act as a rental exchange to distribute the films of any manufacturer other than those making up the list of the ten licensed manufacturers? A. No, sir. 3

Q. How often do you make reports to the head office? A. Once a week.

Q. And what sort of reports do you make? A. The number of customers that we are supplying, and our film rental per week, and a general report of the business, covering the expenditures and receipts.

Q. And the amount of feet of film which you have taken from each of the different manufacturers? A. We send a report of the films that we buy each week.

Q. Who is your superior officer in the General Film Company? A. I don't know. I send all my mail to the General Film Company. Mr. Boushey is the man who appointed me to the position that I have, so I naturally suppose he is the man in charge up there. We do not communicate with anyone directly, unless it is the auditor occasionally, something relative to an account. 4

Q. Now, you get these films by having them shipped to you from the factories of the manufacturers located in Chi-

1 cago, Philadelphia, New Jersey, and New York? A. Yes, sir.

Q. And from such other places as the factories may be located? A. Yes, sir.

Re-examination by Mr. KINGSLEY:

Q. How many releases was the Lake Shore Film Exchange taking at the time of the cancellation? A. They were using about, anywhere from twenty-one to twenty-five.

2 Q. Assuming that your exchange could obtain no more licensed pictures and you were free to go on and do business at your present location, could you obtain a complete program of motion pictures notwithstanding from some other source? A. Yes, sir. I operated two and a half years in Kansas City without ever buying a new film.

Q. At the time the license of the Lake Shore Film Exchange, in Cleveland, Ohio, was cancelled were the independent producers of motion pictures offering complete programs at that time to theatres? A. Yes, sir.

Q. And were they selling to rental exchanges? A. Yes, sir. Just the same as the licensed manufacturers were.

3

Thereupon, E. BOEHRINGER, the next witness produced by the defendants, of lawful age, being first sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Boehringer? A. Baton Rouge, Louisiana.

4 Q. How long have you lived there? A. Since the first of May, 1907.

Q. In what business are you engaged? A. The moving picture business.

Q. Are you an exhibitor? A. Yes, sir.

Q. Do you own a theatre? A. Yes, sir.

Q. What is the name of it? A. I own two at the present time, the Columbia Theatre, and the Dreamland Theatre, both in Baton Rouge.

Q. What is the seating capacity of the Columbia? A. Four hundred and ninety-nine.

Q. What is the seating capacity of the Dreamland? A. 1
Three hundred.

Q. For how long have you owned those two theatres?

A. I have owned the Columbia since September, 1907. Before that I ran a theatre. The Dreamland I opened up about twenty months ago, a year and a half ago.

Q. What service do you use in the Columbia and Dreamland? A. I use the licensed service, and sometimes the independent service in one of them.

Q. From what rental exchange were you obtaining licensed motion pictures for the Columbia Theatre in 1910?

A. The Importing Film & Supply Company. 2

Q. Where were they located? A. At 840 Union Street, New Orleans.

Q. How long did you continue to take service from that company? A. I started with Mr. Pearce, that is, the Importing Film & Supply Company, as soon as we commenced, buying eight reels a week, and I continued to stay with him until he sold out to the General Film Company.

Q. While you were taking the licensed motion picture service from Mr. Pearce's exchange, were you able to announce a program in advance, and to advertise it? A. No, sir. 3

Q. When would you know about the pictures that you were to show the following week? A. I never did know until the train came in that morning about ten forty-five o'clock, and if the train was on time I knew it in time to put it in the paper, but if the train was an hour and a half late, I never did know it, and could not get it into the paper at that time.

Q. After the General Film Company bought the stock and assets of Mr. Pearce's exchange did you then find it possible to announce a program in advance and to advertise it? A. Not at first, but right about, say three or four months after that, after I heard of it, I commenced to get my program in advance. 4

Q. Have you generally got your program in advance since that time? A. Every Wednesday morning we get our program for both houses for the following week.

Q. What do you do with respect to advertising it? A. It gives me a chance to get my magazine together, to make it up by Wednesday, and get it out by Saturday, and distri-

- 1 bute it, and this is a sixteen page weekly program, for each day of the week.

Q. In this booklet are you able to sell space to other advertisers? A. Yes, sir.

Q. Now, Mr. Boehringer, have you, during the period that you have owned the Columbia Theatre been familiar with the prices of motion picture service? A. Oh, yes.

Q. In your town? A. Yes, sir.

- 2 Q. How do the prices you are now paying for motion picture service from the General Film Company's exchange, compare with the prices you were paying Mr. Pearce's exchange? A. Well, I am paying more money, but then I am getting more reels.

Q. How many reels were you getting from Mr. Pearce's exchange? A. I started with Mr. Pearce with eight reels, and finally run it up to twenty-one.

Q. What were you paying for the twenty-one reels? A. I was paying for the twenty-one reels, I think it was \$70. Yes, \$70.

- 3 Q. How many reels are you using now? A. I am getting now, forty-two.

Q. What do you pay for the forty-two? A. I pay \$110 and express, both ways. Before that, you know, I got less reels than that because I was not able to get twenty-one. I got eight reels, and paid \$40.00 a week. When I first started in business.

Q. Do you run unlicensed pictures from time to time in your houses? A. Oh, yes, occasionally.

Q. How long have you been doing that? A. Well, I expect it has been eight or ten months. Since I commenced and started the other house. The second house.

- 4 Q. Are there any other unlicensed houses in your town? A. Yes, sir.

Q. How many of them are there? A. There is one of them there which occasionally opens. They show the Warner Feature Films, and there is another one there uses the combined films of the Universal and Mutual Program. They show six reels a day. That is the large house there.

Q. What is the seating capacity of that? A. They have six hundred or six hundred and twenty-five seats.

Q. How many more licensed houses are there in town besides the Columbia and Dreamland? A. That is all. It is a small town, you know.

Q. Are you solicited by the exchanges from time to time to take their service exclusively? A. Yes, sir. 1

Q. Do they offer you a complete program for your house? A. Yes, sir.

Q. What kind of projecting machines do you use? A. I use at present—I always try to keep up with the latest machines. I started with the Powers Model 5. That was when I started business, and I kept that until they got out the Powers Model 6, and when they got the Powers Model 6A, I used that.

Q. Are those the only models you ever used? A. I have used Edison, but they did not give me the satisfaction that the Powers Model 6 gave me, so I used that afterwards. 2

Cross examination by Mr. GROSVENOR:

Q. There are three regular moving picture theatres in Baton Rouge, two that you own, and then this large one that has 600 seats? A. Yes. There is another one there, a small house of 300 seating capacity. They use a good deal of vaudeville, but it seems they have trouble with the managers there. They come and go, and they open and close up. You can't never tell. 3

Q. So there are three regular theatres that are open right along, and one which is open occasionally? A. This one that is open occasionally, ran continuously for fourteen months. It is only lately that they have been closing up.

Q. What independent pictures have you shown in the Dreamland Theatre? A. I have used some of the Famous Players, and I used some for my house from an agent by the name of Brennan in New Orleans. Some from Millins. Several from him. And then I used several other independent pictures. The "Fall of Gettysburg"—I showed that. 4

Q. Are you showing any independent pictures there this week? A. Yes, sir.

Q. Which ones? A. "The Gunmen of New York." I show that next Sunday. For Friday, I cannot think of the name right now, but I booked it just before I left. We are having a fair there, and I booked three of them, one each for Friday, Saturday and Sunday. The one for Saturday is "The Bandits of Paris." I can't think of the others now.

1 Redirect examination by Mr. KINGSLEY :

Q. Do both of your theatres run continuously? A. No, sir; I cannot always run the Dreamland. Sometimes the expenses would be more than the receipts.

Q. So that opens from time to time? A. Yes. I used to run it regularly before this big house with the independent service opened against me with six reels, and since then I have to shut down.

2 OTTO HAAS, the next witness produced on behalf of the defendants, of lawful age, being first duly sworn by the Examiner, deposes as follows:

Direct examination by Mr. KINGSLEY :

Q. Where do you live, Mr. Haas? A. Charlotte, North Carolina.

Q. How long have you lived in Charlotte? A. Going on seven years.

Q. Are you in the theatrical business? A. Yes, sir.

3 Q. What kind of a theatre do you have in Charlotte? A. Moving pictures.

Q. How many theatres have you in Charlotte? A. Three.

Q. Are those all motion picture houses? A. Well, we have five motion picture theatres, and one vaudeville theatre.

Q. I meant more particularly, how many do you have yourself? A. Three.

Q. Tell us the names of those theatres, and the seating capacity, and the kind of performance you have there? A. Theatre, Edisonia, and Ottaway.

4 Q. What is the seating capacity of the Theatre? A. About 175.

Q. And the Edisonia? A. About 200.

Q. What is the seating capacity of the Ottaway? A. Four hundred and fifty.

Q. Are these all exclusively motion picture houses? A. Yes, sir.

Q. What sort of motion picture service are you using at present? A. I am using at present licensed service, and Universal.

Q. Licensed and Universal in all these houses, or licensed

in one, and Universal in the other? A. No, sir; I mix them occasionally. 1

Q. So that you are running a mixed program in your three houses? A. Yes, sir.

Q. How many reels are you taking a week? A. Thirty-six from the licensed.

Q. How many are you taking from the unlicensed? A. Eighteen.

Q. And you make the combination program of these 54 reels? A. Yes, sir.

Q. Are there any other theatres in Charlotte? A. Yes, sir. 2

Q. Motion picture theatres? A. Yes, sir.

Q. What are they? A. Princess and Amuse-You.

Q. What is the seating capacity of the Princess? A. About 200.

Q. What is the seating capacity of the Amuse-You? A. One hundred and fifty.

Q. What kind of a service do these two theatres run? A. The Princess is running the Warners Features, and the Amuse-You is running the Mutual.

Q. From what rental exchange do you obtain your licensed motion pictures now? A. General Film Company, Atlanta. 3

Q. Were you using the licensed motion pictures in 1910 in your theatres? A. Yes, sir.

Q. From what rental exchange were you getting your service then? A. Theatre Film Supply Company, Birmingham.

Q. At that time in 1910 when you were obtaining a licensed motion picture program from the Theatre Film Supply Company, at Birmingham, were you able to announce a program in advance and to advertise it in Charlotte? A. No, sir. 4

Q. What was the situation with respect to getting your motion picture service at that time? A. I got a service, but I had to take, a good deal of the time, what I could get if my competitor did not get it from another exchange ahead of me.

Q. Did you have conflicts in program at that time with your competitor? A. Frequently.

Q. What would happen under those conditions? A.

- 1 Sometimes I would show a picture after it had been shown there just a day or two previous by my competitor, and sometimes he had one I had shown one day previous, and sometimes we ran one on the same day together.

Q. Did this help or hurt the business? A. It hurts.

Q. From what rental exchange was your competitor getting his supply of licensed motion pictures at that time?

A. I can't remember.

Q. You don't remember? A. No, sir.

- 2 Q. Was it the same exchange from which you were getting yours? A. No, sir. Well, some of them were getting them from the same exchange?

Q. Some were? A. Yes.

Q. Some were getting from the Theatre Film Supply Exchange? A. Yes.

Q. And others were getting from an exchange, the name of which you don't remember? A. I can't remember.

- 3 Q. After you began to get your service from the General Film Company, was this situation changed with respect to being able to announce your programs in advance, and in respect to having conflict with your competitors? A. After the General got hold of the situation, I did not have any more conflicts by competitors, and I got a telegram previous to the day before using my films as to what I was going to get for the next day.

Q. And what is the situation now? A. I get an advance program.

Q. How far in advance do you get it? A. One week.

Q. How long has it been possible to get such an advance program? A. I am not quite positive, but I think some time in May or June. I was not here at the time.

- 4 Q. Do you advertise your program in advance? A. Sometimes I do.

Q. You can do it if you wish? A. Yes, I can if I wish.

Q. During the time that you have been in the motion picture exhibition business in Charlotte, have you been acquainted with the prices that have been paid by your theatres for motion picture service? A. Yes, sir.

Q. How do the prices that you were paying in the early part of 1910 to the Theatre Film Supply Exchange, compare with the prices you are now paying to the General Film Company? A. Comparatively spoken of, I am paying less now than I paid at that time.

Q. What do you mean by that? A. I was using one reel up to that time, per day. 1

Q. For how much? A. And I paid anywhere from \$45 to \$55 per week for six.

Q. That was six reels a week? A. Yes, sir.

Q. What are you paying now? A. Now, I am paying \$45.00 for 12, and \$40.00 for another twelve reel service.

Q. What kind of projecting machines do you use? A. Edison.

Q. In all your theatres? A. Yes, sir.

Q. Have you ever used any other kind? A. No, sir. 2

Cross examination by Mr. GROSVENOR:

Q. These picture films that you use, Mr. Haas, are shipped from Atlanta, down to Charlotte? A. Yes, sir, every day.

Q. Then, when you are through with them, you ship them back every day? A. No, they go on a circuit. I ship them to Asheville, North Carolina.

Mr. KINGSLEY: Mr. Haas, you wanted to make a correction in your testimony. What is it? 3

The Witness: I am paying \$50.00 each for the service in the two houses, and \$40.00 at the other house.

Mr. GROSVENOR: Then you pay \$140.00 per week for your service?

The Witness: Yes, sir.

HOWELL GRAHAM, the next witness produced on behalf of the defendants, being first duly sworn by the Examiner, of lawful age, deposes as follows: 4

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Graham? A. Chattanooga, Tennessee.

Q. How long have you been a resident of Chattanooga? A. When I went there to open up in January, 1906.

1 Q. And what was it that you opened up? A. A picture show.

Q. Have you been operating a motion picture theatre continuously since that time? A. Yes, sir.

Q. How large a house have you? A. All the houses average about 250.

Q. Did the house that you opened when you first went to Chattanooga have a seating capacity of about 250? A. Yes, sir.

Q. Have you operated the same house continuously since? A. Yes, sir.

2 Q. Have you opened any other house? A. Yes, sir.

Q. What other house or houses do you own? A. The Colonial, Alhambra, Crescent, and Theatres.

Q. Are they all located in Chattanooga? A. Yes, sir.

Q. And what is the average seating capacity of these houses? A. About the same.

Q. They all run about 200 or 250? A. Yes, sir.

Q. What kind of service do you use in the various houses? A. I use the General service.

Q. By that you mean the licensed service? A. The licensed service, yes, sir.

3 Q. And you obtain it from what rental exchange? A. Atlanta.

Q. From the Atlanta branch of the General Film Company? A. I am now using the Mutual and the General.

Q. How many reels of licensed film are you taking at present? A. I am getting nine reels a day.

Q. Do you run seven days a week? A. Six days.

Q. That would be 54 reels each week? A. Licensed.

Q. How many reels per week of the unlicensed? A. Twenty-four. Four a day.

4 Q. How do you use these reels, do you blend them in your various programs? A. Yes, sir.

Q. So that each of your theatres have some licensed service and some unlicensed? A. We try to assemble all the Westerns in one house. Give a dependable program for certain people who have a certain line of stuff they want to go and see.

Q. Before the General Film Company had an office in Atlanta, from what rental exchange were you obtaining your licensed service? A. The Theatre Film Supply Company in Birmingham.

Q. Did you continue to obtain service from the Theatre Film Supply Exchange at Birmingham until the General Film Company acquired its business, or not? A. No, sir. There was a space of several months that I obtained film from Memphis. From the Mitchell Film Exchange of Memphis. 1

Q. Was that an independent service? A. No, sir; that was a licensed service.

Q. When was it that you returned to the Birmingham Exchange? A. I never returned to the Birmingham Exchange. 2

Q. When was it that you began to take service from a branch of the General Film Company at Atlanta? A. Why, I continued with the Mitchell service until it had been acquired by the General, and then my supply was transferred from Memphis to Atlanta.

Q. While you were taking your service from Memphis in the early part of 1910, and before you began to take your service from Atlanta, what was the situation with respect to being able to announce a definite fixed program in advance and to advertise the same to your constituency? A. Well, we had a very unreliable system of obtaining information, you see. Sometimes the films would not get into the exchange in time to get them off on certain trains for me and others were substituted, so there was really no dependable—no advertising that I could put out with any degree of certainty, the day before. 3

Q. Did that condition continue until you began to take your service from Atlanta? A. Until I was able to trace films out of Memphis, because I was getting the whole program. I was getting everything they made, and managed to follow it up. I had the release dates, and after the General had acquired it, I was able to obtain it in that way. Through the lists that were furnished me by the manufacturers. 4

Q. What is the situation now with respect to being able to get a program in advance? A. I am able to get a dependable program and know in advance what I am going to get. I am getting everything and can naturally depend on it.

Q. Did you have a competitive situation at any time in your business prior to taking motion picture service from

1 the General Film Company? A. Yes, sir. The Theatre Film Supply Company of Birmingham opened a competitive house.

Q. And by that do you mean a competitive theatre? A. Yes, sir.

Q. Where was that competitive theatre opened? A. You mean in town?

Q. Yes. A. It was in the same town, yes, sir.

Q. In your immediate neighborhood? A. It was a block away.

2 Q. What was the name of this theatre? A. Bonita.

Q. What was the seating capacity of it? A. About 275.

Q. What were the developments of that competition after the Bonita Theatre was opened? A. The house had been open but a very short time when I began to discover discriminations against my house.

Q. In what did these discriminations consist? A. Preference in the selection of programs.

Q. Did you make any change then in respect to obtaining service from another exchange? A. Yes, sir; I arranged to get service out of Memphis from the Mitchell Film Exchange.

3 Q. What arrangements did you make with the Mitchell Film Exchange? A. Gave him money enough to justify him in buying the additional prints necessary to take care of my house.

Q. What was the result of this new arrangement? A. Why, I am there yet, and the other one is not.

Mr. GROSVENOR: You mean the theatre is not?

4 The Witness: The theatre is, but the Theatre Film Supply Company is not the owner. I have got the place—I am interested in the place myself.

Mr. GROSVENOR: You own the other theatre?

The Witness: I am interested in it.

By Mr. KINGSLEY:

Q. What arrangements did you find it necessary to make with Mr. Mitchell in order to meet this competition?

A. I had to give Mr. Mitchell \$200 for two prints, Mr. Mitchell of course, in order to protect me, had to buy four prints. It was possible at that time to secure four prints, Mr. Mitchell buying those, and I got clients, or assisted Mr. Mitchell in getting business enough to justify him, and I personally assisted Mr. Mitchell to get business enough to justify him in securing enough films to have four per day ready for shipment, and then the Theatre Film Supply Company would get their stuff on the release day into town, and Mr. Mitchell held his four releases ready for shipment, and upon the flash on the program of the Bonita Theatre, I was able to wire Mr. Mitchell for the other two, securing them to make my program for the following day. 1 2

Q. Did this avoid a conflict? A. It was the only way it could have avoided it.

Q. And did this give you a superior program? A. Oh, no. The other house, of course, having the selection, had the preference in the matter of program.

Mr. GROSVENOR: Was this all before the General Film Company was organized? 3

The Witness: Just prior to the organization of the General Film Company.

By Mr. KINGSLEY:

Q. By that you mean just prior to the time that the General Film Company took over the Mitchell Exchange at Memphis? A. Yes. And Little Rock. They took the two at the same time.

Q. What kind of projecting machines do you use in your theatres? A. Well, I have used everything from Gaumont—I am using Powers at present. 4

Q. Will you give us the names of those you have used, so far as you remember them? A. Yes, sir. I have used Edison's, Gaumont's, Pathe and Powers.

Cross examination by Mr. GROSVENOR:

Q. The General Film Company acquired this Theatre Film Service Company of Birmingham also, did it not? A. Yes, sir. After having acquired the Memphis.

1 Q. That is the Mitchell Exchange at Memphis? A. Yes, sir.

 Q. How long have you been mixing the General and the Mutual pictures in your theatres? A. Well, for several months. I had mixed them though, special releases. The independent film has been used by competitors, and I could not get hold of it.

 Q. You have not shown independent pictures in your theatres more than a few months? A. Well, I have shown it a few months at a time, yes, sir.

2 Q. Well, how long have you been showing independent pictures at your theatres? A. About a year.

 Q. You get your films by express from Atlanta? A. Yes, sir.

 Q. And then return them to Atlanta when you are through with them? A. They go to Knoxville. I get them from Nashville, and to Knoxville, but they come out of Atlanta. They go to Nashville before coming to me, and then to Knoxville.

 Q. How many theatres are there in Chattanooga? A. On the main street, there is eight.

3 Redirect examination by Mr. KINGSLEY:

 Q. How many of those eight theatres are unlicensed? A. Two.

 Q. Are they large or small theatres? A. They are the same size. There is not very much difference.

 Q. By that do you mean 250 to 300 seating capacity? A. About 200 to 300.

 Q. Do the other theatres blend their programs as you do? A. No, sir. The Universal program is projected at one house.

4 Q. Exclusively? A. Yes, sir.

 Q. And what program does the other independent house use? A. The Mutual.

 Q. Do they use is exclusively? A. No, sir. I am using the Mutual, but not exclusively; that is, not exclusively in one house.

 Q. How many motion pictures are there altogether in Chattanooga? A. I suppose there is about 12.

 Q. How are they divided, between licensed and unlicensed service? A. Why, there is about six licensed houses.

Q. How do you count your houses, as licensed or unlicensed? A. I count three of them licensed and one of them independent, but when there is a special release in the Mutual program—part of my houses are located so that I have quite a patronage of ladies and if there is an acceptable picture for them, I take it out of the one house, substituting another in the Western house, as I call it.

Q. You have four theatres altogether? A. Yes, sir.

MR. GROSVENOR: Five theatres?

The Witness: I am interested in the other.

By Mr. KINGSLEY:

Q. Did you name the five in your direct examination? A. I named four.

Q. You only named four? A. Yes, sir.

Q. So you have named four theatres to us in which you use— A. Three licensed, and one designed for the Mutual.

Recross examination by Mr. GROSVENOR:

Q. I understood you to name five theatres on direct examination? A. Five theatres, but I am not in control and do not manage the fifth theatre, and my connection with that fifth theatre is simply an equity in it.

Q. When you testified that you take every week 54 licensed reels and 24 unlicensed, were you speaking of the pictures taken for the five theatres or the four? A. For the four. I have nothing in common with the management of the fifth theatre.

Q. What service does the fifth theatre use? A. It uses a Warner and the licensed.

Q. And the licensed? A. Yes, sir.

Q. How many licensed reels a week do they take? A. I don't know. I suppose about 12.

Q. And how many Warner? A. I think three or four. I don't know what their program consists of.

Redirect examination by Mr. KINGSLEY:

Q. When you say they take three or four Warner reels, do you mean three or four plays or three or four reels? A.

- 1 Three or four of their subjects that consist of three or four reels each. Some of them are three, and some of them are four.

Q. So they might take 12 to 15 reels of those? A. Yes, sir, I would say that would be three or four of the Warner features.

Recross examination by Mr. GROSVENOR:

Q. And the same theatre takes 12 subjects of the licensed pictures? A. To the best of my judgment.

- 2 Q. Which also may be 15 to 20 reels? A. I don't think they take over two reels per day, and they run that in conjunction with the Warner features.

Thereupon, OTTO P. HALL, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

- 3 Q. Where do you live, Mr. Hall? A. Atlanta.
Q. How long have you lived in Atlanta? A. Since 1910.
Q. Prior to that time where did you live? A. Cleveland, Ohio.
Q. How long were you a resident of Cleveland? A. Four years.
Q. In what business were you engaged while at Cleveland? A. The moving picture business.
Q. In what branch of the moving picture business? A. From assistant manager to manager.
Q. Of a motion picture theatre, or of an exchange? A.
4 Both.
Q. Of what exchange were you assistant manager? A. I was never assistant manager of an exchange.
Q. With what exchange were you connected? A. With the C. H. Peckham Exchange.
Q. Were you the manager of that exchange? A. No, sir, I was in the machine department.
Q. By that, do you mean the projecting machine department? A. Yes, sir.

Q. With what theatre were you connected in Cleveland? 1
A. Dreamland.

Q. How long were you connected with the Dreamland Theatre? A. Two years, as assistant manager.

Q. During what years were you the assistant manager of the Dreamland Theatre in Cleveland, Ohio? A. 1908 and 1909.

Q. To what place did you go then? A. I came to Atlanta.

Q. Were you in the motion picture business in Atlanta?
A. Yes, sir.

Q. What theatre did you own or operate or manage? A. 2
I managed the Majestic Theatre.

Q. And how long did you have the Majestic Theatre? A.
Three years.

Q. Are you still managing it? A. No, sir.

Q. When did you cease to manage it? A. About eighteen months ago.

Q. Since that time have you managed any theatre in Atlanta? A. No, sir. Now, I gave my residence in Atlanta for that length of time there. There was an intermediate space there when I was not here.

Q. Where were you then? A. Jacksonville, Florida. 3

Q. What were you doing there? A. Building and managing the Prince Theatre.

Q. When was it that you built the Prince Theatre in Jacksonville? A. It was opened on July 19, 1912.

Q. How long did you operate it? A. Eighteen months.

Q. Did you then sell it or dispose of it? A. No, sir, it was turned into another corporation.

Q. A theatrical corporation? A. Yes, sir.

Q. What is your present occupation? A. Branch manager of a film exchange.

Q. Of what film exchange? A. The World Special 4
Film Corporation.

Q. And is it an unlicensed film exchange? A. It is.

Q. What is the character of the service it furnishes?
A. Features.

Q. How many reels per week? A. No stated amount.

Q. From what source does it obtain its supply? A.
From foreign manufacturers, through a New York office.

Q. Do you handle foreign goods altogether? A. Mostly,

1 Q. What other exchanges are there in Atlanta? A. The General Film Company, the Universal, the Mutual Film Corporation, Warner's Features, Eclectic features. Then there is some New York concern which has come in here, and is using a service similar to the General Film Company's.

Q. Is that the Greater New York Film Rental Company? A. Yes, sir.

Q. When did they arrive here? A. I believe they opened their office up today.

2 Q. During the time you were in Jacksonville, what kind of service were you using? A. The Mutual, and the Universal.

Q. How large a theatre was the Prince Theatre in Jacksonville? A. Five hundred and ten seating capacity.

Q. And during the entire time that you were manager of it did you use the unlicensed service? A. With the exception of about two months.

Q. And what two months were those, towards the beginning or the end of the time? A. Towards the end.

3 Q. What was the character of the unlicensed program that you used in the Jacksonville theatre? A. I used three first run pictures a day, and by the character of the pictures do you mean—

Q. No, I mean the age, I don't mean the character, I mean the age of them? A. They were first runs in Jacksonville, but sometimes reached us twenty days old.

Q. Then you ran this sort of a program continually for some eighteen months? A. Yes, sir.

Q. What competition did you have in that immediate vicinity? A. Had the Grand Theatre, and the Imperial Theatre, and the Savoy Theatre.

4 Q. What was the service in the Grand Theatre? A. The licensed.

Q. What was its seating capacity? A. Four hundred.

Q. What was the service in the Imperial Theatre? A. Licensed.

Q. The seating capacity was what? A. Six hundred.

Q. What was the service in the Savoy, and the seating capacity? A. The licensed service for over a year.

Q. Were the Grand, Imperial, and Savoy Theatres in your neighborhood? A. Within half a block.

Q. And you have stated their seating capacity, have you not? A. Yes, sir. 1

Q. You say that you turned this theatre over to a corporation? A. Yes, sir.

Q. Was this a corporation which combined one or more theatres? A. Yes. The Prince Theatre was built by the United Amusement Company, a corporation, and it was afterwards turned into the interests of the Grand, or the Montgomery Amusement, and the United Amusement Company, and the S. A. Lynch interests combined and formed a new company called the Southern Amusement & Investment Company, which now control those three houses. 2

Q. After the combination did you have occasion to learn what the other theatres had been doing? A. Yes, sir.

Q. How did the business that they had been doing during the preceding fifteen or eighteen months compare with the business that your theatre had been doing? A. The only theatre that I had a chance to get the facts from was the Grand Theatre in Jacksonville, and comparing it with the Prince Theatre in Jacksonville which I operated, the Prince Theatre and the Grand Theatre were on an even basis, having cleared in a year something like ten thousand dollars. 3

Q. Yours was using an entirely independent service? A. Yes, sir.

Q. And the other was using entirely the licensed service? A. Yes, sir. I want to say that with the exception of the time the Kinetograph Company came into existence which was about the eight weeks that I speak of there.

Q. Have you been acquainted with exhibitors in Atlanta, and the number of houses for the past four years? A. Yes, sir, I have.

Q. Have you known of the changes that have taken place in the business from time to time? A. In what respect? 4

Q. In respect to the personality of the managers or the owners of motion picture houses in Atlanta? A. Yes, sir, I have.

Q. What percentage of those who were in business in the early part of 1910 are now in business? A. In Atlanta?

Q. Yes. A. Well, I would say a very small per cent. That is about the best answer I can make on that.

Q. You mean by that practically all of these houses

- 1 have changed hands or that the managers or owners have sold out or gone into other businesses? A. Yes, sir, practically all.

Cross examination by Mr. GROSVENOR:

Q. Did it ever happen to you that you were showing licensed pictures, and that your license was cut off? A. Yes, sir.

Q. Where was that? A. Jacksonville.

- 2 Q. And was it at this theatre? A. At the Princess Theatre, while I was running the Kinetograph service. When the General Film Company absorbed the Kinetograph Company the General Film Company cut me off.

Q. The Kinetograph Company was a company that was doing business in licensed pictures for a while in Jacksonville in competition with the General Film Company? A. Yes, sir.

Q. And it has now gone out of business? A. Yes, sir.

Re-examination by Mr. KINGSLEY:

- 3 Q. After you were cut off what did you do? A. I made application to the General Film Company for service again.

Q. Did you get it? A. No, sir.

Q. What did you do then? A. Took the independent service.

Q. And you continued to run the independent service then? A. Yes, sir.

Q. Until you left the management of the theatre? A. Yes, sir.

Recross examination by Mr. GROSVENOR:

- 4 Q. How soon after that did you give up the management of the theatre? A. Possibly three months.

Q. Is the theatre now showing the independent service? A. The theatre is now showing the licensed service supplied by the General Film Company.

Re-examination by Mr. KINGSLEY:

Q. Did you find any difficulty in getting a complete program at the time you changed back to the unlicensed service? A. No, sir.

Thereupon JOHN G. EVANS, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. Do you live in Atlanta? A. Yes, sir.

Q. How long have you lived here? A. All my life.

Q. In what business are you engaged? A. The motion picture business.

Q. Do you own a theatre? A. Yes, sir.

Q. What is the name of it? A. The Vaudette.

Q. Where is it located? A. On Whitehall Street.

Q. What is its seating capacity? A. Five hundred.

Q. Do the local ordinances permit you to have a larger seating capacity than five hundred? A. Well, it is questionable. It is possible that it could be put over on them, and get more seats, and then, possibly you could not.

Q. How long have you had the Vaudette Theatre? A. This present theatre has been running two years the first of last September, or the eighteenth day of last September.

Q. Did you build it? A. Yes, sir.

Q. What kind of service are you using in the Vaudette Theatre? A. The Mutual service.

Q. How long have you used the Mutual service in the Vaudette Theatre? A. Since they have been in Atlanta. I don't know just when they came to Atlanta, over a year or eighteen months, or something like that.

Q. Prior to that time, what service did you use? A. The General Film Company.

Q. At the time that you started the Vaudette Theatre did you take service from the General Film Company? A. Yes, sir.

Q. Did you run a licensed service in the Vaudette Theatre until you changed to the independent service? A. Yes, sir.

Q. At the time you changed from the licensed to the unlicensed service were you able to get a complete program for the Vaudette theatre? A. From the unlicensed exchange?

Q. Yes? A. Yes, sir, I was.

Q. Did you get a complete program for the Vaudette Theatre from the unlicensed exchange? A. Yes, sir.

1 Q. Of what does your program consist? A. I run three first-runs daily.

Q. And that makes a total of eighteen reels a week? A. Yes, sir.

Q. All first-runs? A. Yes, sir.

Q. Had your business been prosperous up to the time you changed from the licensed to the unlicensed service? A. Yes, sir.

Q. And did your business continue to be prosperous after you changed from the licensed to the unlicensed service? A. Yes, sir.

2 Q. Are you still using the unlicensed service? A. Yes, sir.

Q. And does your business continue to prosper? A. Yes, sir.

Q. Going back to the time when you were taking service from the General Film Company, did you have any experience of conflict of service with any competitor? A. Well, there was a duplication of the program for a while, at first—well, possibly for quite a while.

3 Q. And did this duplication require some effort on your part to avoid it? A. Well, I did not object to it myself.

Q. On what theory did you fail to object to duplication? A. Well, I don't know. I thought I could run a better theatre possibly.

Q. Were you competing with your opponent vigorously at that time? A. Well, I could not say that I was competing. I was doing the best I could with my own business, and let the other man do the same with his. It was seeing who was the best, that was all.

4 Q. What happened to your competitor? A. He changed service.

Q. Did he take an independent service? A. I think so. I am not positive.

Q. At that time, when you had this duplication of service, from what rental exchange were you obtaining service? A. I was taking it from the Theatre Film Supply Company.

Q. And was your opponent taking service from the Theatre Film Supply Company? A. I think he was taking from the Birmingham Film Supply Company.

Cross examination by Mr. GROSVENOR:

1

Q. What was the occasion of your leaving the licensed service? A. I could not get as many first run pictures daily as I wanted, and I could from the other concern.

Q. Were there a good many other theatres showing the General Film Service in Atlanta at the time? A. Well, yes. Yes, I think possibly they had a majority of them at that time.

Redirect examination by Mr. KINGSLEY:

Q. Is your theatre the largest theatre in town? A. I think we have more seats than any of the others.

2

WILLIAM T. MURRAY, the next witness produced on behalf of the defendants, being of lawful age, duly sworn by the Examiner, deposes as follows:

Direct examination by Mr. KINGSLEY:

Q. Do you live in Atlanta? A. Yes, sir.

Q. Are you in the motion picture business? A. Yes, sir.

3

Q. Do you own a motion picture theatre? A. I own two of them.

Q. Will you give us the names of your theatres, and the seating capacity of each? A. Alamo No. 1 seats about 240 people.

Q. Yes? A. Alamo No. 2 seats about 400.

Q. How long have you had these theatres? A. Well, No. 1, I have had it just about three years. No. 2 I have just had it just about two or three months.

Q. During the period that you have been operating theatres in Atlanta, have you had any experience with conflicting programs? A. Well, you take before ever I went to the General Film Company, I was using independent service in Alamo No. 1. At that time there was two independent exchanges open, one here which is known as the Consolidated Film Exchange, and one in New Orleans which was known as the Dixie Film Exchange. We were getting film from the Dixie. And of course we conflicted at that time with the Savoy Theatre, which Mr. Olenoh was running. Of course this is independent service I am speaking of now. And then

4

- 1 the Consolidated Film Exchange bought out the Dixie Film Company, which made it very unsatisfactory, and we had to quit taking service from the Consolidated Film Exchange on account they would—Mr. Olenoh was manager of the Consolidated Film Exchange and owned the Savoy Theatre, and he would take and run over the stuff up there and pick out the best reels and send them to the Savoy Theatre, and I had to take what they left. So at that time I could not get service from the General Film Company because they claimed that if they gave me reels over there, they could not give me reels away from the other theatre, and they had rather not supply
- 2 me there because it would work a hardship on me and also on the other theatres, but later on, the Montgomery Theatre came down here and opened up on the north side. Before that, the Alcazar was the only one using licensed service on the north side, and the Vaudeite on the south. When the Montgomery opened up, I went over to see the General Film Company and they told me they were going to start getting about 36 prints here and that they could furnish me, providing I could choose with one of the theatres on the north side, and the Vaudeite would have to do the same thing. So
- 3 since that the service has always been very good, and I have always—they have always treated me very nice at the General Film, and I have never had a complaint, no way in the world.

- Q. Have they kept you apart from your competitor except in the manner you have described? A. Now, when the Kinetograph Company opened up here, I went to the Kinetograph Company and at that time the General Film Company was supplying the Montgomery, and the Kinetograph Company was supplying the Alcazar and the Alamo, and at that time, why, of course, we conflicted on the programs, because
- 4 the Montgomery would either run with me or with the Alcazar every day.

Q. When the Kinetograph Company was operating here in Atlanta, was there a considerable conflict of the programs? A. Well, of course they had another house here, you know, and the General Film Company was trying to get as much business as they could, and the Kinetograph Company was trying to get as much business as they could. They were fighting over it pretty bad.

Q. Aside from that, was there a considerable conflict of

programs while they were carrying on this fight? A. Yes, 1
there was always a house running with us as long as the
Kinetograph Company was in business.

Q. And by "running with us" you mean running the same
pictures as yourself, and there was a conflict? A. Yes. It
hurt business. It always hurts business when another house
is running with you. That is, close together, in a small town
like Atlanta.

Cross examination by Mr. GROSVENOR:

Q. What happened to the Kinetograph Company? A. 2
The Kinetograph Company, they went out of business.

Q. Are you posted as to the different theatres which show
moving pictures in Atlanta, the names of them? A. Yes, sir.

Q. How many licensed theatres are there in the city? A.
Now?

Q. Yes. A. There's three that is running release day
stuff, that is, reels just like the reels that are released today.
After they have been run here in the town, I don't know how
many theatres are running these pictures after I get through
with them.

Q. That is, there are three theatres that have first run 3
pictures? A. Yes, sir.

Q. Then there are other theatres which do not show them
on the first run, but show them a few days later, or a few
weeks later? A. Yes, sir.

Redirect examination by Mr. KINGSLEY:

Q. Are these three theatres to which you refer, downtown
theatres? A. Yes, sir; on Whitehall Street. Two on White-
hall and one on Peachtree.

Q. The other theatres to which you refer as possibly this 4
service long afterwards, are in the outlying districts, are
they not? A. Most of these theatres would not take this
first run stuff if they could get it, they run vaudeville in con-
nection, and they make the pictures as a kind of a second
issue. They feature the vaudeville part.

Q. But they are not in the neighborhood of the three
theatres to which you have referred? A. Well, some of them
are, but then of course they do not hurt our business, and I

1 don't think we hurt their business because they feature the vaudeville, and we feature the pictures.

Q. After the Kinetograph Company sold out, did the conflict of pictures to which you have referred, cease? A. Yes, sir.

Recross examination by Mr. GROSVENOR:

Q. Does this number of three theatres include two that you own, or are there three theatres in addition to those two? A. No, sir; it includes the two that I own.

2 Q. So there is one other besides yours that has first run pictures? A. Yes, sir.

Redirect examination by Mr. KINGSLEY:

Q. How many theatres are there running first run independent service? A. There is only two.

Q. Those are what theatres? A. One of them is the Savoy, and the other one is the Vaudeville.

3 Petitioner's Exhibits (marked for identification)
Nos. 251, 260, 262 and 263a, have been turned over
to Mr. H. K. Stockton.

Whereupon at 1:45 P. M. on this Monday the 12th day of January, 1914, the hearings are adjourned as above set forth.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

1

<p style="text-align: center;">UNITED STATES OF AMERICA, Petitioner, <i>v.</i> MOTION PICTURE PATENTS CO. and others, Defendants.</p>	}	<p style="text-align: center;">No. 889. Sept. Sess., 1912.</p>
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MANHATTAN HOTEL, NEW YORK CITY,
February 3rd, 1914, 10:30 A. M.

The hearings were resumed pursuant to adjournment.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

3

Present also, CHARLES F. KINGSLEY, Esq., appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

HENRY MELVILLE, Esq., attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

4

JAMES J. ALLEN, Esq., appearing for Vitagraph Company of America and Albert E. Smith.

- 1 CHARLES O. BAUMANN, a witness produced on behalf of the defendants, being first duly sworn by the Examiner, deposes as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. 293 New York Avenue, Brooklyn.

Q. How long have you been a resident of Greater New York? A. All my life.

Q. In what business are you engaged? A. Manufacturing motion pictures.

- 2 Q. In what business were you engaged in 1908? A. Film exchange business.

Q. Were you interested as owner or part owner in a film exchange in 1908? A. Yes.

Q. What was the name of that film exchange? A. Empire Film Exchange.

Q. Where was the Empire Film Exchange located? A. Fulton Street, New York.

Q. Did the Empire Film Exchange operate under an Edison license in 1908? A. Yes, sir.

- 3 Q. Do you remember when the Motion Picture Patents Company issued licenses to the rental exchanges in this city and throughout the country? A. Yes.

Q. In what year was that? A. 1909.

Q. Was the Empire Film Exchange licensed by the Motion Picture Patents Company? A. No.

Q. Did the Empire Film Exchange ask for a license from the Motion Picture Patents Company? A. No.

- 4 Q. At what time did the producers of motion pictures who had taken out licenses from the Motion Picture Patents Company, cease supplying motion pictures to the Empire Film Exchange? A. The latter part of January or the early part of February, 1909.

Q. What steps did the Empire Film Exchange take in February, 1909, to secure motion pictures for its customers after the licensed producers of motion pictures ceased to supply it? A. Got a number of reels or supplies from the Western Import Company of 23rd Street.

Q. Did the Empire Film Exchange begin to import film from abroad? A. No.

Q. Did it secure imported film? A. Yes.

Q. What brands of imported films did it secure? A.

Most of all the European makers. I don't recall the names of the brands. 1

Q. Can you name some of them? A. Ambrosio, Itala, Hepworth, Cines, Pasquala, and a number of others. I don't recall the brands.

Q. How many releases did you obtain from the independent producers of motion pictures in this country during February, March and April, 1909? A. One or two.

Q. How many releases of foreign film did you obtain during February, March and April, 1909? A. Six or seven.

Q. Did the business of the Empire Film Exchange after January, 1909, increase or diminish during the year 1909? A. Increased. 2

Q. How long did the Empire Film Company remain in business? A. Until 1912. It is still in business.

Q. How long did the Empire Film Exchange remain in business under your control or the control of yourself or your associates? A. 1912.

Q. Who was associated with you in the ownership of the Empire Film Company in 1909? A. Kessel Brothers.

Q. Were you an officer of the Empire Film Company in 1909? A. Yes. 3

Q. What was your position? A. Vice-President.

Q. Who was the President? A. A. Kessel, Jr.

Q. To whom was the Empire Film Company sold in 1912? A. The Mutual Film Corporation.

Q. During the period intervening from February 1st, 1909, to the time when you sold the Empire Film Exchange in 1912, had you been conducting a profitable or an unprofitable business? A. Profitable.

Q. During that period had you increased the number of releases which you were able to supply to your customers? A. Yes. 4

Q. During that period, did you deal exclusively in unlicensed motion pictures and imported motion pictures also unlicensed? A. Yes.

Q. During that period, to what number did the releases of foreign and domestic unlicensed motion pictures increase? A. Up to thirty reels a week.

Q. At the time you sold the Empire Film Exchange to the Mutual Film Corporation, what was the number of releases per week that you were able to supply to your customers? A. Thirty.

1 Q. Had your customers increased or diminished during the period intervening from February 1st, 1909, up to the time you sold your exchange in 1912? A. More than tripled.

Q. What profits was the Empire Film Exchange making at the time you sold to the Mutual Film Corporation? A. A thousand dollars a week.

Q. For how long a period had you been making a thousand dollars a week? A. A year and a half.

2 Q. After the Empire Film Exchange began to deal exclusively in unlicensed motion pictures, did you and the President of the exchange, Mr. Kessel, organize a company for the manufacture of motion pictures? A. Yes.

Q. About what time did you organize this company? A. February, 1909.

Q. What was the name of the company which you organized for the manufacture of motion pictures? A. New York Motion Picture Company.

Q. Who were the officers of the New York Motion Picture Company? A. A. Kessel, Jr., Fred J. Balshofer and myself.

3 Q. What positions did they occupy? A. Mr. Kessel, President; Mr. Balshofer, Vice-President; and myself, Secretary and Treasurer.

Q. Did you have a studio? A. We had no studio.

Q. What steps did you take in 1909 to produce motion pictures? A. Taking exterior scenes principally, and used what is known as an outdoor studio in early 1909.

Q. Did you subsequently obtain a studio? A. Yes.

Q. Where was that located? A. Los Angeles, California.

Q. At what time in 1909 did the New York Motion Picture Company begin to produce motion pictures? A. March.

4 Q. How many releases did you begin with? A. Began with one release, in May.

Q. Did you subsequently increase the number of your releases? A. Yes, sir.

Q. How soon after May did you increase the number? A. In the Fall of 1909.

Q. At that time how many releases did you have? A. Two releases.

Q. Did you subsequently increase that number? A. Yes.

Q. To what extent did you increase the number of re-

leases of the New York Motion Picture Company? A. To the present time, to six reels per week. 1

Q. In referring to releases in your testimony thus far, have you referred to the number of releases per week each time? A. Yes.

Q. Has the business of the New York Motion Picture Company been successful or unsuccessful? A. Successful.

Q. What was its original capitalization? A. Ten thousand dollars.

Q. Did you subsequently increase the capitalization? A. By organizing a new company, to a million dollars, of similar name. 2

Q. So that now the New York Motion Picture Company has a capitalization of one million dollars? A. One million dollars.

Q. What dividends are you paying on your capitalization at the present time? A. Two per cent. monthly.

Q. How long have you been paying that? A. For the past two months.

Q. Prior to that time, how much were you paying? A. One per cent. a month.

Q. How long were you paying one per cent. a month? A. Seven months. 3

Q. Do these dividends to which you have referred, during the past nine months, represent all the net profits which the New York Motion Picture Company earned? A. No.

Q. What other profits were earned by it? A. An additional one or one and a half per cent. per month.

Q. Is that laid by in the treasury of the company? A. Yes.

Q. What time did you say it was in 1909 that the New York Motion Picture Company began to release motion pictures? A. May. 4

Q. How many reels per week did you release in May of 1909? A. One.

Q. Were any suits brought against the New York Motion Picture Company in 1909 by the Motion Picture Patents Company? A. Yes.

Q. What suit or suits was begun that year by the Motion Picture Patents Company against the New York Motion Picture Company? A. Camera infringement suit.

Q. Was proof taken in that case? A. Yes.

1 Q. Was an application made for a preliminary injunction at the beginning of the suit? A. Yes.

Q. Was that granted or denied? A. Denied.

Q. After that, was testimony taken in the suit? A. Yes.

Q. Was testimony taken in Brooklyn? A. Yes.

Q. Was any testimony taken elsewhere? A. California.

Q. After testimony had been taken for sometime, what was done, if anything, with respect to the application for injunction? A. Consented to an injunction.

Q. Am I to understand that the defendant consented to an injunction? A. Yes.

2 Q. Was this litigation expensive? A. Quite.

Q. Do you recall how much it cost the New York Motion Picture Company to defend, approximately? A. Altogether the patent litigation, about sixty-five thousand dollars.

Q. At that time were you as an officer of the New York Motion Picture Company, fearful of the lawsuits under the patents owned or controlled by the Motion Picture Patents Company? A. Yes.

Q. Was it the policy of your company to avoid lawsuits with the Motion Picture Patents Company, if possible, at that time? A. Yes.

3 Q. In 1909 did you have any knowledge of lawsuits begun by the Motion Picture Patents Company under its patents against various manufacturers or producers of motion pictures in New York City or its vicinity? A. Yes.

Q. What producers were sued? A. Independent Motion Picture Company of America, David Horsley, or rather, the Centaur Film Company.

Q. Do you wish to substitute the Centaur Film Company for the Independent Motion Picture Company? A. No. For David Horsley. He was the proprietor.

4 Q. Do you recall any other defendants in 1909 or thereabouts? A. Well, 1909 or 1910, Thanhouser, Carlton Motion Picture Laboratory.

Q. Respecting these lawsuits and the defendants, did you have any other knowledge excepting rumors of the trade and general talk that came to you? A. Yes, I did have.

Q. Had you talked with any of the defendants? A. Yes.

Q. So that you knew that they had been sued? A. Yes.

Q. Do you know under what patent or patents these suits were brought? A. Yes.

Q. What patent? A. Camera patents. No. 12,037, I believe is the number of your patent. 1

Q. What became of the suit brought by the Motion Picture Patents Company against the New York Motion Picture Company regarding which you have just testified, and in which your company consented to an injunction? A. The case was dropped after the adverse decision by the Court of Appeals against the Patents Company.

Q. When was the Motion Picture Distributing & Sales Company formed? A. 1910.

Q. Do you recall the month in 1910 when the Motion Picture Distributing & Sales Company was organized? A. May or June, and began business in July. 2

Q. What was the Motion Picture Distributing & Sales Company? A. An organization handling the product of all of the unlicensed producers of America, as well as importers.

Q. Who were the members of the new corporation? A. Mr. Laemmle, Mr. Swanson, Mr. Powers, Mr. Thanhouser, Mr. Oes, Mr. Offerman, and myself.

Q. With what company was Mr. Oes connected? A. Importer. The Great Northern Film Company. 3

Mr. GROSVENOR: I object to this entire line of examination as immaterial, and going into matters outside of the issues in this case.

By Mr. KINGSLEY:

Q. With what company was Mr. Offerman connected? A. Eclair.

Q. Did each of the members of the Motion Picture Distributing & Sales Company whom you have mentioned, represent a firm or corporation which was producing motion pictures? A. Yes. 4

Q. Did they own shares in equal amounts in the Motion Picture Sales & Distributing Company? A. Yes.

Q. Do you know anything about the Carlton Laboratories? A. Yes.

Q. Who organized the Carlton Laboratories? A. Myself.

Q. When did you organize them, Mr. Baumann? A. 1910.

1 Q. What was the business of the Carlton Laboratories?
A. Manufacturing and producing motion picture films.

Q. What was the total amount of the releases that the Carlton Laboratories produced after they got into successful operation? A. Two.

Q. When did the Carlton Laboratories begin to release two subjects a week? A. About July of 1910.

Q. And did they continue to release two subjects a week?
A. Yes, up to the present time.

2 Q. Was suit at one time brought against the Carlton Laboratories by the Motion Picture Patents Company and against you, your partner Mr. Kessel, and Mr. Burstein?
A. Yes.

Q. Was this a suit under a patent? A. Yes.

Q. What patent? A. Camera patent.

Q. Do you mean by that the Edison camera patent to which you have referred in your prior testimony? A. Yes.

Q. After the organization of the Motion Picture Sales & Distributing Company, were the companies known as the American, the Rex and the Yankee added to its constituents?

3 A. Yes.

Q. Did any change occur in the organization of the Motion Picture Distributing & Sales Company in 1912? A. Yes.

Q. What was this change? A. Half of the members of the Sales Company organized a new program, while the other half organized another program and, withdrawing simultaneously, left the Sales Company a shell.

Q. Did they organize these new programs under the auspices of new corporations? A. Yes.

4 Q. What were the names of these new corporations which these seceding members formed? A. Universal Film Manufacturing Company, and Film Supply Company of America.

Q. With which of these new corporations did the New York Motion Picture Company affiliate? A. Universal.

Q. With which of these two new corporations did the Carlton Laboratories affiliate? A. Film Supply Company of America.

Q. Did the New York Motion Picture Company subsequently withdraw from the Universal? A. Yes.

Q. How did it then operate? A. Independent.

Q. How long has the New York Motion Picture Company

been operating independently in the way you have just described? A. 1912 up to the present time. 1

Q. How many releases do you have at the present time?

A. Including its subsidiary companies, six. In the aggregate, nine reels a week.

Q. In other words, you release six subjects a week, which aggregate nine reels? A. Yes.

Q. What are the subsidiary companies to which you refer? A. Broncho Film Company—

Q. Will you name the releases as you name the companies? A. Broncho Film. 2

Q. How many releases? A. Two reels, one release. Domino Motion Picture Company, one release, two reels; Kay-Bee brand of the New York Motion Picture Company, one release, two reels; Keystone Film Company, three releases, three reels.

Q. To what person, firm or corporation does the New York Motion Picture Company now sell its motion pictures? A. Mutual Corporation.

Mr. GROSVENOR: Then, this nine reels a week is also included as part of the weekly output of the Mutual? 3

The Witness: Yes.

By Mr. KINGSLEY:

Q. During the time that you have been connected with the companies that you have described, have you been conversant with the competition carried on by the General Film Company? A. Yes.

Q. Have you come into contact with the General Film Company from time to time in the management of your business? A. No. 4

Q. Have you been conversant with the methods employed by the General Film Company in the management of its business in the general field? A. No.

Q. Did the General Film Company ever attempt to interfere with your business or with the business of the companies with which you are affiliated? A. No.

Q. Have you any complaints to make against the Gen-

1 eral Film Company on the score of unfair competition? A.
No.

Mr. GROSVENOR: Are you an officer in the Mutual?

The Witness: No.

Mr. GROSVENOR: You have not anything to do
with the distributing end of the Mutual?

2 The Witness: No.

Mr. GROSVENOR: I object to the testimony and the
answers given, and move to strike them out, as this
witness has not been shown to be qualified to testify
on this subject.

By Mr. KINGSLEY:

Q. Were you a Director of the Motion Picture Distribut-
ing & Sales Company? A. Yes.

Q. Were you also an officer? A. Yes.

3 Q. What officer? A. Treasurer.

Q. As Director and Treasurer of the Motion Picture
Distributing & Sales Company, did you have any knowledge
of the amounts paid to defend the Motion Picture Patents
Company suits? A. Yes.

Q. Did the Sales Company pay for the defense of the
suits on the camera patent? A. Yes. All of the patents
sued on.

Q. Do you mean by that— A. The Latham Loop and the
Film.

4 Q. What amount did the Sales Company pay for the
defense of the suits under these various patents to which
you have referred? A. About one hundred and sixty or
one hundred and seventy thousand dollars.

Q. Do you know what unlicensed programs of motion
pictures are in the field at present? A. Yes.

Q. How long have you been in the motion picture busi-
ness? A. Six and a half years.

Q. During that time have you been an exchange man?
A. Yes.

Q. During that time have you been a producer? A.
Yes.

Q. During that time, have you been connected with the distributing end of the business? A. Yes. 1

Q. Have you, during that period, devoted yourself exclusively to the motion picture art? A. Yes.

Q. Have you kept yourself posted regarding prices, regarding the development of the art, and regarding the demands of the public for novelties and artistic creations? A. Yes.

Q. Have you been conversant with the growth of the business during that period, the increase in the number of subjects, the increase in the number of producers, the increase in the number of exhibitors, and the general development which has marked the art? A. Yes. 2

Q. Do you know at the present time, what independent programs are in the field? A. Yes.

Q. How many independent unlicensed programs are in the field? I don't mean licensed. I mean the unlicensed. A. Four.

Q. Will you tell us what they are? A. Mutual—

Q. How many releases? A. Twenty-eight reels; Universal, 28 reels; Exclusive Film Corporation, 18 reels; Warner's Features, 12 reels.

Q. In addition to the programs you have enumerated, are there a number of independent feature companies in the field? A. Yes. 3

Q. Could you say approximately how many reels they are releasing per week? A. Fifty reels.

Q. Fifty reels? A. Yes.

Q. During your connection with the Empire Film Company, did you come in contact with exhibitors so as to know their needs? A. Yes.

Q. And the kind of programs that they ought to have in order to attract the public? A. Yes. 4

Q. What was your experience while you were connected with the Empire Film Exchange about coming in daily contact with exhibitors as to the necessity and desirability of two motion picture theatres operating in the same immediate neighborhood, being kept apart and free from conflicting programs? A. That was the general request from exhibitors. To be kept apart in the program.

Q. Have you had any experience with conflicting programs, and by that I mean, have you had occasion to notice conflicts in the programs? A. During the F. S. A.

1 Q. By the use of non-conflicting programs, is it possible for competitors operating in the immediate vicinity of one another, to stimulate the motion picture business to their mutual advantage? A. Yes, in my opinion.

Q. Assuming that three theatres in the immediate vicinity of one another have substantially the same program, do you believe that under those conditions, they stimulate the motion picture business? A. I do not.

2 Q. Assuming that three motion picture theatres side by side or in the intermediate neighborhood, are running three entirely different programs—do you say that under those conditions they stimulate the business? A. Yes.

Q. I show you a copy of the Motion Picture World of July 23rd, 1910, which contains an advertisement at page 176, signed "Motion Picture Distributing & Sales Company, 111 East 14th Street, New York," and ask you if you identify it? A. Yes.

Q. Is that an advertisement which was inserted in the Motion Picture World of that date by the Motion Picture Distributing & Sales Company, of which you were then an officer? A. Yes.

3 Q. And does it contain a list of the independent buying exchanges with which the Motion Picture Sales & Distributing Company was then dealing? A. Yes.

Mr. KINGSLEY: I offer the list in evidence.

Mr. GROSVENOR: I object to its admissibility on the ground of immateriality, irrelevancy and incompetency.

The list offered is received in evidence, marked "Defendants' Exhibit No. 131," and is as follows:

4

Defendants' Exhibit No. 131.

LIST OF BUYING EXCHANGES, JULY 13TH, 1910.

Anti-Trust Film Co., 79 So. Clark St., Chicago, Ill.

Albany Film Exchange, 418 Broadway, Albany, N. Y.

L. J. Applegath & Sons, 145 Yonge St., Toronto, Ont.

Allen Amusement Company, Calgary, Alberta, Can.

B. & W. Film Exchange, 412 East Baltimore St., Baltimore, Md.

Buckeye Film & Proj. Co., 309 Arcade Bldg., Dayton, Ohio. 1

Boston Film Rental Co., 132 Boylston St., Boston, Mass.

Bijou Film & Amusement Co., 1222 Grand Ave., Kansas City, Mo.

Cincinnati Film Exchange, 315 West 4th St., Cincinnati, Ohio.

Consolidated Amusement Co., 28 West Lexington St., Baltimore, Md.

Eugene Cline, 59 Dearborn St., Chicago, Ill.

Dixie Film Co., 720 Maison Blanche Bldg., New Orleans, La. 2

Dandy Film Exchange, 10 East 15th St., New York City.

Empire Film Exchange, 150 East 14th St., New York City.

W. E. Greene Film Exchange, 228 Tremont Ave., Boston, Mass.

Globe Film Service, 1073 East Madison St., Chicago, Ill.

Gaumont Company, 154 St. Catherine St., Montreal, Que.

Great Eastern Film Exchange, 21 East 14th St., New York City.

Great Western Film Co., Winnipeg, Manitoba, Can.

Hudson Film Company, 138 East 14th St., New York City. 3

Independent Film Exchange, 415 Ferry St., Pittsburg, Pa.

Independent Western Film Exchange, Swetland Bldg., Portland, Ore.

Kinetograph Company (for Canada), 41 East 21st St., New York City.

Laemmle Film Service, 196 Lake St., Chicago, Ill.

Laemmle Film Service, 256 Hennepin Ave., Minneapolis, Minn.

Laemmle Film Service, 1517 Farnam St., Omaha, Neb.

Laemmle Film Service Alliance, Pantages Bldg., Portland, Ore. 4

Michigan Film & Supply Co., 1106 Union Trust Bldg., Detroit, Mich.

J. W. Morgan, 1230 Grand Ave., Kansas City, Mo.

Miles Brothers, 790 Turk St., San Francisco, Cal.

Philadelphia Film & Projection Co., 44 North 9th St., Philadelphia, Pa.

Philadelphia Film Exchange, 934 Arch St., Philadelphia, Pa.

- 1 Pacific States Film Exchange, 1065 Mission St., San Francisco, Cal.
 Pacific States Film Exchange, 323 Lissner Bldg., Los Angeles, Cal.
 Paramount Film Exchange, 61 West 14th St., New York City.
 Peerless Film Exchange, 94 Fifth Ave., New York City.
 Wm. Steiner Film Exchange, 110 Fourth Ave., New York City.
- 2 W. H. Swanson St. Louis Film Co., 200 North 7th St., St. Louis, Mo.
 Southern Film Exchange, 17 Opera Place, Cincinnati, Ohio.
 W. H. Swanson & Co., 160 Lake St., Chicago, Ill.
 Texas Film Exchange, 311 Elm St., Dallas, Tex.
 Toledo Film Exchange, Toledo, Ohio.
 United Motion Picture Company, 112 Main St., Oklahoma City, Okla.
 Victor Film Service, Seneca and Pearl Sts., Buffalo, N. Y.
 Victor Film Service, Prospect and Huron Sts., Cleveland, Ohio.
- 3 Wagner Film & Amusement Co., 208 North 9th St., St. Louis, Mo.
 Western Film Company, 246 South Broadway, Los Angeles, Cal.

MOTION PICTURE DISTRIBUTING AND SALES CO.

111 East 14th Street, New York.

By Mr. KINGSLEY:

- 4 Q. I show you a copy of the Motion Picture World of October 29th, 1910, and call your attention to an advertisement at page 967, signed "Motion Picture Distributing & Sales Company, 111 East 14th Street, New York City," and containing a list of buying exchanges, under date of October 22nd, 1910, and ask you if you recognize it? A. Yes.

Q. Is that an advertisement which was published by the Motion Picture Distributing & Sales Company of which you were at that time an officer? A. Yes.

Mr. KINGSLEY: I offer that portion of the adver-

tisement headed "List of Buying Exchanges," October 22nd, 1910, in evidence. 1

Mr. GROSVENOR: I object to that as immaterial and irrelevant.

The list is received in evidence, marked "Defendants' Exhibit No. 132," and is as follows:

Defendants' Exhibit No. 132.

**LIST OF BUYING EXCHANGES, OCTOBER 22ND, 1910.
CANADA.**

Applegath, L. J. & Sons, 145 Yonge St., Toronto, Ont. 2

Canadian Film Exchange, Calgary, Alberta.

Gaumont Company, 154 St. Catherine St., Montreal, Que.

Kinetograph Co. (for Canada), 41 East 21st St., New York City.

Canadian Film Exchange, Vancouver, B. C.

Great Western Film Co., Kennedy Bldg., Winnipeg, Man.

CALIFORNIA.

California Film Exchange, 1065 Mission St., San Francisco. 3

Miles Brothers, 790 Turk St., San Francisco.

Pacific States Exchange, 734 S. Main St., Los Angeles

Western Film Company, 108 East 4th St., Los Angeles.

COLORADO.

W. H. Swanson Film Exchange, 301 Railroad Bldg., Denver.

DISTRICT OF COLUMBIA.

Paramount Film Exchange, 428 Ninth St., N. W., Washington. 4

GEORGIA.

Consolidated Film Exchange, Rhodes Bldg., Atlanta.

ILLINOIS.

Anti-Trust Film Co., 79 So. Clark St., Chicago.

Eugene Cline, 59 Dearborn St., Chicago.

Globe Film Service, 107 E. Madison St., Chicago.

- 1 H. & H. Film Service Co., 98 Jackson Blvd., Chicago, Ill.
Laemmle Film Service, 196 Lake St., Chicago.
Standard Film Exchange, 155 E. Washington St., Chicago.
Chicago Film Exchange, 40 Jackson Blvd., Chicago.

KANSAS.

Wichita Film & Supply Co., 122 No. Market St., Wichita.

LOUISIANA.

- 2 Dixie Film Co., 720 Maison Blanche Bldg., New Orleans.

MASSACHUSETTS.

Boston Film Rental Co., 665 Washington St., Boston.
W. E. Green Film Exchange, 228 Tremont Ave., Boston.

MARYLAND.

Consolidated Amusement Co., 28 W. Lexington St., Baltimore.

B. & W. Film Exchange, 412 E. Baltimore St., Baltimore.

MINNESOTA.

- 3 Laemmle Film Service, 400 Sykes St., Minneapolis.

MICHIGAN.

Michigan Film & Supply Co., 1106 Union Trust Bldg., Detroit.

MISSOURI.

Bijou Film & Amusement Co., 1222 Grand Ave., Kansas City.

J. W. Morgan, 1310 Walnut St., Kansas City.

- 4 Swanson Crawford Film Co., Century Bldg., St. Louis.

NEBRASKA.

Laemmle Film Service, 1517 Farnam St., Omaha.

NEW YORK CO.

Albany Film Exchange, 418 Broadway, Albany.

Victor Film Service, 39 Church St., Buffalo.

NEW YORK CITY.

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Exhibitors Film Exchange, 138 Third Ave., City.
Empire Film Exchange, 150 East 14th St., City.
Great Eastern Film Exchange, 21 East 14th St., City.
Paramount Film Exchange, 61 West 14th St., City.
Peerless Film Exchange, 94 Fifth Ave., New York City.
Hudson Film Exchange, 138 East 14th St., City.
Wm. Steiner Film Exchange, 110 Fourth Ave., City.

OHIO.

Cincinnati-Buckeye Film Co., 309 Arcade Bldg., Dayton. 2
Cincinnati-Buckeye Film Co., 315 West 4th St., Cincinnati.

Toledo Film Exchange, 319 Superior St., Toledo.
Victor Film Service, Prospect and Huron Sts., Cleveland.

OREGON.

Ind. Western Film Exchange, Swetland Bldg., Portland.

OKLAHOMA.

United Motion Picture Co., 112 Main St., Oklahoma City.

PENNSYLVANIA.

3

Eagle Film Exchange, 143 N. 9th St., Philadelphia.
Philadelphia Film & Projection Co., 44 N. 9th St., Philadelphia.
Philadelphia Film Exchange, 934 Arch St., Philadelphia.
Ind. Film Exchange, 415 Ferry St., Pittsburg.

TEXAS.

Texas Film Exchange, 311 Elm St., Dallas.

UTAH.

4

Co-operative Film Exchange, 320 Atlas Block, Salt Lake City.

WASHINGTON.

Pacific Film Exchange, Globe Bldg., Seattle.
MOTION PICTURE DISTRIBUTING & SALES CO.,
111 E. 14th St., N. Y. City.

1 By Mr. KINGSLEY:

Q. Going back to the time when the Motion Picture Distributing & Sales Company was supplying unlicensed exchanges throughout the country, did you have any rule with regard to shipment of motion pictures to exchanges?

A. Yes.

Q. What was that rule? A. C. O. D.

Q. Did you enforce that rule consistently? A. Yes.

2 Mr. GROSVENOR: I make the same objection to all this line of examination.

By Mr. KINGSLEY:

Q. What was the reason of this rule of shipping motion pictures C. O. D. to the exchanges?

Mr. GROSVENOR: Of what period are you speaking?

The Witness: 1910, up to the present time. Up to 1912.

3 By Mr. KINGSLEY:

Q. By that you mean, during the whole life of the Motion Picture Distributing & Sales Company— A. Yes.

Q. This rule of shipping C. O. D. to the exchanges was enforced? A. Yes.

4 Q. What was the reason for that rule? A. Because it was only a five thousand dollar corporation, organized for the purpose of protection of manufacturers' accounts, together with the taking care of the litigation, collected from all of the different manufacturers, and the reason for the C. O. D.'s was to reimburse all of the manufacturers, as well as taking care of the litigation, patent litigation, and if it were not for the fact that it was sent out C. O. D., they probably never could have collected their money, or half of it.

Q. Why couldn't they? A. Irresponsible people in buying. Concerns, I should say.

Q. So that one of the reasons, and probably the principal reason, for your enforcing the rule of shipping motion pictures C. O. D. to the exchanges was the fact that you

doubted the financial responsibility of many of them? A. That was one of the principal reasons. 1

Q. Going back to the list of buying exchanges appearing in the advertisement of the Motion Picture Distributing & Sales Company in the Motion Picture World of July 23rd, 1910, at page 176, I call your attention to the Albany Film Exchange which appears therein. Do you know who was the owner or manager of the Albany Film Exchange, 418 Broadway, Albany, New York? A. William Steiner.

Q. Was Mr. Steiner a former member of the F. S. A.? A. Yes. 2

Q. I call your attention to the B. & W. Film Exchange, 412 East Baltimore Street, Baltimore, Maryland. Do you know who owned that exchange, or was the manager of it? A. Yes.

Q. Who? A. Herbert Miles.

Q. Was Herbert Miles a former member of the F. S. A.? A. Miles Brothers was. New York and Frisco.

Q. And was Herbert Miles a member of the firm of Miles Brothers? A. Yes.

Q. I call your attention to the Bijou Film & Amusement Company, 1222 Grand Avenue, Kansas City, Missouri. A. Yes. 3

Q. Do you know who owned or managed that exchange? A. A man named Bachman.

Q. Was Bachman a former member of the F. S. A.? A. Yes.

Q. Do you remember the name of his former exchange? A. Twentieth Century Optiscope Company, Chicago.

Q. I call your attention to the Dixie Film Company, 720 Maison Blanche Building, New Orleans, Louisiana. Do you know who owned that or operated it? A. Yes.

Q. Who? A. Fichtenberg. 4

Q. Was that formerly a licensed exchange? A. Separating the interests, Swanson-Dixie Film Company of New Orleans was the name when they had given up the service of the F. S. A., or the licensed manufacturers.

Q. And was William Swanson one of the members of the firm at that time, when it was a member of the F. S. A.? A. Yes.

Q. I call your attention to Eugene Cline, 59 Dearborn Street, Chicago, Illinois. Who owned or operated that exchange? A. Himself.

1 Q. Was his exchange formerly a member of the F. S. A.? A. Yes.

Q. I call your attention to Globe Film Service, 1073 East Madison Street, Chicago, Illinois. Do you know who owned or operated that? A. Yes, a man named Baker.

Q. Did he formerly belong to the F. S. A.? A. Yes.

Q. I call your attention to the Hudson Film Company, 138 East 14th Street, New York City. Do you know who owned or operated that exchange? A. Yes, Harstn.

Q. Was Harstn a former member of the F. S. A.? A. Yes, doing business under the Harstn Film Exchange.

2 Q. I call your attention to Laemmle Film Service, 196 Lake Street, Chicago, Illinois; Laemmle Film Service, 256 Hennepin Avenue, Minneapolis, Minnesota; Laemmle Film Service, 1517 Farnam Street, Omaha, Nebraska; Laemmle Film Service Alliance, Pantages Building, Portland, Oregon. Do you know who owned or operated those four exchanges? A. All excepting the Laemmle Film Service Alliance, Pantages Building, New Orleans, I know that Laemmle operated them.

Q. Were those four exchanges formerly licensed? A. Yes.

3 Q. I call your attention to the Michigan Film & Supply Company, Union Trust Building, Detroit, Michigan. Do you know who owned or operated that exchange? A. A man named Klatt.

Q. Do you know whether or not his exchange was formerly a licensed one? A. F. S. A.

Q. I call your attention to Miles Brothers, 790 Turk Street, San Francisco, California. Do you know who owned or operated that exchange? A. Earle Miles.

Q. Was this exchange formerly a licensed exchange? A. Yes.

4 Q. I call your attention to the Philadelphia Film Exchange, 934 Arch Street, Philadelphia, Pennsylvania. Do you know who owned or operated that exchange? A. Lessy and Karson.

Q. Do you know whether or not that was formerly a licensed exchange? A. It was.

Q. I call your attention to William Steiner Film Exchange, 110 Fourth Avenue, New York City. Do you know who owned or operated that exchange? A. Yes.

Q. Who? A. Steiner.

Q. William Steiner? A. William Steiner.

1

Q. Was that formerly a licensed exchange? A. Doing business under the name of Imperial Film Exchange.

Q. I call your attention to William H. Swanson, St. Louis Film Company, 200 North 7th Street, St. Louis, Missouri. Do you know who owned or operated that exchange? A. William Swanson.

Q. Was that formerly a licensed exchange? A. Yes.

Q. Did it do business under the same name? A. Yes.

Q. I call your attention to W. H. Swanson & Company, 160 Lake Street, Chicago, Illinois. Do you know who owned or operated that exchange? A. William H. Swanson.

2

Q. Was that formerly a licensed exchange? A. Yes.

Q. I call your attention to Victor Film Service, Seneca and Pearl Streets, Buffalo, New York; Victor Film Service Prospect and Huron Streets, Cleveland, Ohio. Do you know who owned or operated those two exchanges? A. P. A. Powers.

Q. With what exchanges had Mr. Powers been connected prior to this time? A. Buffalo Talking Machine Company, or Syracuse Talking Machine Company. I don't know who else.

3

Q. Was it a licensed exchange? A. Licensed exchange.

Q. In asking you these questions regarding the ownership or operation of these exchanges, have you been answering with regard to the time set out in this advertisement, July 23rd, 1910? A. Speaking from that time out.

4

1

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA,
Petitioner,

v.

MOTION PICTURE PATENTS Co. and others,
Defendants.

No. 889.

Sept. Sess., 1912.

2

NEW YORK CITY, February 4, 1914.

The hearings were resumed pursuant to adjournment at 2:30 o'clock P. M., February 4, 1914, at Room 159, Manhattan Hotel, New York City.

3

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

Present also, CHARLES F. KINGSLEY, Esq., appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

4

HENRY MELVILLE, Esq., attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

JAMES J. ALLEN, Esq., appearing for Vitagraph Company of America, and Albert E. Smith.

Thereupon CHARLES O. BAUMANN, resumed the stand. 1

Cross examination by Mr. GROSVENOR:

Q. Mr. Baumann, when was it that the Empire Film Company sold out to the Mutual Film Corporation? A. In 1912.

Q. Can you give me more accurately the date? A. About July.

Q. These thirty reels a week, which you testified were being released by the Empire Film Company, in 1912, were reels that you were buying from the manufacturers? A. Yes. 2

Q. And how many of those manufacturers were manufacturers who went into the Universal? A. Who were at that time affiliated with the Sales Company?

Q. And who later went into the Universal? A. A part of which went later into the Universal.

Q. A number of them went into the Mutual? A. Into the Film Supply Company of America.

Q. And the Film Supply Company of America was finally succeeded by the Mutual? A. No. 3

Q. What became of the Film Supply Company? A. A number of the manufacturers had withdrawn from the Supply Company, and did business directly with the exchanges.

Q. Well, then, what happened to the Film Supply Company? Is it still doing business? A. I believe not.

Q. What became of its business? A. After half of the manufacturers had withdrawn from the Supply Company it left a number of them who had organized a company known as the Exclusive Film Corporation. 4

Q. So that, the various manufacturers who made up those thirty reels are now scattered among the Universal, the Mutual, and the Exclusive Service Corporations? A. Yes, sir.

Q. And today you sell the entire output of the New York Motion Picture Company, constituting nine reels a week, to the Mutual Film Corporation? A. We had given the Mutual Film Corporation exclusive—or made them our exclusive agent.

Q. Then this output, that is, the entire output of the

1 New York Motion Picture Company, is today distributed by the Mutual Film Corporation? A. Yes.

Q. And the nine reels made by the New York Motion Picture Company constitute about one-third of the releases made a week by the Mutual Film Corporation? A. About one-third.

Q. How many releases does the General Film Company make a week? A. I don't know.

Q. How many does the Exclusive Film Corporation make? A. They release about eighteen reels.

2 Q. The Exclusive Film Corporation is a distributing agency, merely? A. Yes, sir.

Q. Is Warner's Features a distributing agency? A. That is a booking agency.

Q. Do they manufacture reels? A. They do not manufacture.

3 Q. Then a large number of the reels that are made by the independent companies are distributed by either Warner's Features Company, or by the Exclusive Film Corporation? A. The two concerns are quite different. The Warner's Features Company is a corporation controlling a number of exchanges, or booking offices. The Film Corporation is one that handles the agencies for various pictures in marketing their product.

Q. Isn't it a fact, then, that a large part of the output of the independent manufacturers is distributed through these two sources, or booked through these two sources, the Exclusive Film, and the Warner's Features? A. There is quite a supply from that source, or through that source.

Q. Have you ever considered what is the weekly output of the General Film Company? A. I have learned.

4 Q. Isn't that the largest distributing agency today? A. Yes, in my opinion.

Q. Are you able to state how many they distribute? A. I am not.

Q. A week? A. I am not.

Q. Where did you get the information as to what is distributed by these various companies you named on direct examination? A. Having visited those offices frequently, and having been in close touch with those offices, and getting such information from them directly, while I

have never visited the offices of the General Film Company. 1

Q. Does any of your information come from the trade papers? A. No.

Q. On page 2874, and the following pages, you named a list of buying exchanges, dated July 13th, 1910, being quoted from an advertisement of the Motion Picture Distributing & Sales Company. That list is a list, or purports to give a list of the exchanges to whom you were selling C. O. D., as stated on page 2877? A. Yes, sir.

Q. Very many of those exchanges were small concerns, were they not? A. More or less. 2

Q. I didn't ask you about more or less. I said many of those exchanges named on pages 2874 to 2876, being copied from the advertisement of July 13th, 1910, were small exchanges?

Mr. KINGSLEY: Objected to, on the ground that the witness has already answered the question.

The Witness: In my opinion they were the average exchange that existed in that time. 3

By Mr. GROSVENOR:

Q. And many of them were small exchanges, were they not? A. I don't understand the question "small."

Q. Were not a large number of those exchanges named on this list doing a very inconsiderable amount of business?

Mr. KINGSLEY: Objected to, on the ground that the question has already been answered clearly.

The Witness: I don't know what business they did. 4

By Mr. GROSVENOR:

Q. Isn't it a fact that the greater number of those exchanges, if they did any business with you at all, were doing a very small amount of business with you?

Mr. KINGSLEY: Objected to, on the ground that the question has already been answered.

- 1 The Witness: From correspondence from the owners of those exchanges, they were doing a profitable business.

By Mr. GROSVENOR:

Q. I am not asking you about reports. I am asking you about the business you were doing with them, and kindly address your answer to the question, and answer it directly "yes" or "no," if you can? Just read the question to the witness again.

- 2 The Examiner read the question to the witness as follows:

"Q. Isn't it a fact that the greater number of those exchanges, if they did any business with you at all, were doing a very small amount of business with you?"

Mr. KINGSLEY: I make the same objection to that question.

- 3 The Witness: They were all doing a fairly big business—a fair business with our Sales Company's distributing office.

By Mr. GROSVENOR:

Q. How much do you mean by "fair business?" A. They were all buying no less than six hundred, up to eighteen hundred dollars a week.

Q. And these amounts were always being paid C. O. D., paid on the goods being shipped by you C. O. D.? A. Yes.

Q. Were any of these exchanges handling the goods of the licensed manufacturers? A. Not at that time.

- 4 Q. Isn't it a fact that a large number of those on that list had their licenses cancelled in 1909, or before July, 1910?

Mr. KINGSLEY: I object to the question as indefinite, the expression "large number" not conveying a clear idea of what the questioner means.

The Witness: Very few had been cancelled by the Patents Company, and others had never taken licenses from it.

By Mr. GROSVENOR:

1

Q. Let us examine some of these. William Steiner was identified with what exchanges before July, 1910? A. William Steiner Film Exchange, Fourth Avenue; The Albany Film Exchange, or an exchange in Albany.

Q. What was the name of the exchange in Albany? A. I believe it is the Albany.

Q. Are you sure it was not in Troy? A. I am sure it was not Troy.

Q. What other exchanges had he been identified with? A. Prior to the William Steiner Film Exchange, the Imperial Film Exchange, at the same address.

2

Q. Which address? A. The Fourth Avenue address.

Q. Was not the license of the Imperial Film Exchange at the same address, that is, Fourth Avenue, cancelled in April, 1910? A. Yes.

Q. At the time the Imperial Film Exchange was doing business it was doing business as a licensed exchange, was it not? A. Yes.

Q. After its license was cancelled it began to do business with independent products? A. Yes.

Q. And its name was changed? A. Yes, sir.

3

Q. So that that necessitated the changing of its customers? A. No.

Q. Why not? A. Because it got an adequate supply of film, and was able to continue from that time on.

Q. Did it retain the same customers? A. I don't know.

Q. Then, taking that exchange from that list, it appears that it had only been in business about three months at the time of this advertisement? A. Yes.

Q. And it had succeeded another exchange, whose license had been cancelled? A. Yes, sir.

Q. Herbert Miles, his license had been cancelled, had it not? A. Yes.

4

Q. And that was cancelled in April, 1910? A. I believe that is the date.

Q. So that the several exchanges named on this list as being connected with Miles were all organized in the three months between April and July, 1910?

Mr. KINGSLEY: Objected to as calling for the conclusion of the witness.

1 The Witness: Yes.

Mr. KINGSLEY: I also move to strike out the answer on the ground that the witness can have no knowledge as to whether the exchanges referred to were organized after the cancellation of the license held by the proprietor, or whether the proprietor continued on with the same exchange, handling a different kind of motion pictures.

2 Mr. GROSVENOR: Counsel for defendants seems to forget he has put this witness on as qualified to testify as to these matters, and the cross examination is perfectly proper, to show how much he does know.

By Mr. GROSVENOR:

Q. The Twentieth Century Optiscope Company, another on this list, also had its license cancelled? A. I believe it did.

Q. Before its license was cancelled it had been doing business in the licensed film? A. Yes.

3 Q. You stated yesterday that after the Patents Company was formed the Empire Film Company had only one reel a week of domestic film to release. Is that right, in May, 1909? A. One American reel?

Q. Yes. A. Yes.

Q. Was that the extent of the entire output of independent reels in the United States at that time, that is, made in the United States? A. I don't think so.

Q. How much else was there that was not made by the licensed manufacturers? A. Probably one or two.

4 Q. So that, considerably over ninety per cent. of the films that were made in this country in the beginning of 1909, went into the Patents Company? A. Yes, sir.

Q. Eugene Cline, also named on this list, of Chicago, Illinois, his license had been cancelled, had it not? A. Yes, sir.

Q. The Michigan Film & Supply Company, of Detroit, Michigan, their license had been cancelled? A. I don't remember whether they had a license from the Patents Company.

Q. The Philadelphia Film Company's (Philadelphia) license had been cancelled, had it not? A. Yes, it had.

Q. And the several licenses of William H. Swanson had been cancelled? A. Yes, sir. 1

Q. Had the license of the Globe Film Service been cancelled? A. I don't know whether they had a license or not.

Q. Had the license of the Bijou Film & Amusement Company been cancelled? A. I don't know whether they had a license or not.

Q. Is the Carlton Laboratories doing business to-day? A. Yes, under a new corporation.

Q. What is the distributing agency for the films manufactured by that concern? A. The Mutual. 2

Q. And are the reels manufactured by the Carlton Laboratories included among the nine that are supplied the Mutual by the New York Motion Picture Company? A. No.

Q. Are you interested in the Carlton Laboratories? A. No.

Q. To-day? A. No.

Q. I wish you would get, or ascertain for me, the exact date of the sale of the Empire Film Company to the Mutual Film Service, Mr. Baumann, and let me have it. And I will ask you at this time: What was the exact date of the sale, and then you can supply the information later, and incorporate it in your answer to this question. I want the exact date. A. The date the contract was made, or the deal entirely consummated? 3

Q. You had better give me the last. A. In other words, after the entire proposition had been turned over?

Q. Yes. I want to know the date of the transfer of the business of the Empire Film Company to the Mutual Film Corporation. A. It was carried out in a progressive stock sale.

Q. Did the Empire Film Company go out of business as a corporation, or did it simply sell the stock in that company? A. Sold its stock. 4

Q. When was the Mutual Film Corporation organized? A. I don't know.

Q. Is William Steiner in business to-day? A. Yes.

Re-examination by Mr. KINGSLEY:

Q. How much did you get for the Empire Film Exchange, if you care to answer? A. A fairly big amount of money that I do not wish to state—the amount.

1 Q. At page 2873 of the record, in response to my questions yesterday, you said that the Mutual was releasing twenty-eight reels, the Universal, twenty-eight reels, and the Exclusive Film Corporation, eighteen reels, Warner's Features, twelve reels, and the other independents, approximately fifty reels? A. Yes.

Q. In making that reply, did you mean that those were separate and distinct reels, and that there were no duplications of subjects? A. No duplication of subjects.

2 Q. At the time you sold the Empire Film Exchange, did you consider the exchange business a stable business, or subject to fluctuations and uncertainties? A. Uncertainty.

The Witness: I have just telephoned to get the date of the sale of the Empire to the Mutual, and I can't say positively myself that it was on the 25th of July, 1912, but I have that information from the attorneys.

Whereupon, at 3:30 P. M., on this Wednesday, February 4th, 1914, the hearing was adjourned.

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IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

1

UNITED STATES OF AMERICA, Petitioner,	No. 889.	2
<i>v.</i>		
MOTION PICTURE PATENTS Co. and others, Defendants.	Sept. Sess., 1912.	

NEW YORK CITY, February 24th, 1914.

The hearings were resumed pursuant to agreement of counsel at Room 159, Manhattan Hotel, New York City, at 10:40 o'clock, A. M., February 24, 1914.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

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JOSEPH R. DARLING, Esq., Special Agent.

Present, also, CHARLES F. KINGSLEY, Esq., GEORGE R. WILLIS, Esq., and FRED C. WILLIAMS, Esq., appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin, Armat Moving Picture Company, Melies Mfg. Co. and Gaston Melies.

J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

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HENRY MELVILLE, Esq., attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

JAMES J. ALLEN, Esq., appearing for Vitagraph Company of America and Albert E. Smith.

1 Thereupon, JOHN COLLIER, the next witness produced by the defendants, of lawful age, being duly sworn by the Examiner, deposes as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Collier? A. Sparkill, New York.

Q. Where is your place of business? A. 70 Fifth Avenue.

2 Q. Are you connected with any organization or institution at the address mentioned? A. With the National Board of Censorship of Motion Pictures, and the People's Institute.

Q. What is the People's Institute, Mr. Collier? A. The People's Institute is an organization supported by voluntary contributions doing educational work, civic educational work among the immigrants of the East Side and the wage-earners generally.

Q. What is the connection of the National Board of Censorship with the People's Institute? A. The People's Institute is one of the constituent bodies that make up the National Board, and was the organization that brought about the creation of the National Board.

3 Q. When was the National Board of Censorship organized? A. In March, 1909.

Q. Did you participate in the formation of the National Board of Censorship? A. Yes, I was then the Secretary of the People's Institute, and the Board was started by Prof. Charles Sprague Smith, the Director of the People's Institute, and myself.

4 Q. What were the circumstances which led up to the formation of the National Board of Censorship? A. The moving picture shows were being assailed and pursued because of the quality of the films—

Mr. GROSVENOR: I enter objection to this examination, on the ground that it is irrelevant, and has no bearing on any of the issues in the case; I understand that this objection applies to all of the examination of this witness, without my repeating it.

Mr. KINGSLEY: It may be so understood.

The Witness: In December of 1908 the Mayor of New York closed all the moving picture shows in New York be-

cause of the bad films being shown, and the exhibitors became frightened and were being pursued, and we were in touch with the moving picture men because we had been investigating them.

They came to the People's Institute and asked me what to do, and we advised them to form a local voluntary censorship to improve the quality of the films. We agreed to organize the Board, and we called together eleven civic bodies, including the Public Education Association, the Charity Organization Society, the Children's Aid Society, the Ethical Social League, and similar disinterested bodies. We then approached the manufacturers and asked them to submit their films to us before they were made public. We went to the Motion Picture Patents Company, which had just been organized, and to the independent groups, and both groups agreed to submit their films. At this time the Board was simply the agent of the moving picture exhibitors and the New York public. In June, 1909, the representatives of the Motion Picture Patents Company approached the Board of Censorship, which was then not called the "National Board," and asked that an effort be made to extend the inspection of films to all films shown in the United States. The Board stated that it was willing to do this if the trade interests would meet all or a part of the expenses entailed. The National work was begun in June, 1909, with the inspection of all of the film output of the Motion Picture Patents Company and about one-third of the film output of the independent producers, and the work was continued to date. During this time we have continuously censored the film output of the Motion Picture Patents Company except for about three weeks in the Fall of 1909, and we have gradually extended our control until it includes all the regular independent producers and nearly all of the feature films and State Rights producers. We are not, however, censoring for the Kinema-color films.

MR. GROSVENOR: They do not need censoring?

The Witness: That is what they say, and that is correct.

By MR. KINGSLEY:

Q. Have you in mind the character of criticisms that were

1 made of motion pictures at the time of the formation of the National Board of Censorship? A. It was charged that they were sensational and salacious; that they were exploiting interest in crime for purely sensational purposes, and that the imported films were imported without any special discrimination, and were not suited to American taste and habits. There was also much criticism against the conduct of shows apart from the films, and our Board has all along been doing a national work to improve the conditions of motion picture shows in general.

2 Q. At the time of the formation of the National Board of Censorship did you satisfy yourself as to whether these criticisms which you have related were a reality or not? A. They were exaggerated, but a reality, and our own work for the first two or three months bears this out inasmuch as we prohibited nearly ten per cent. of all films.

Q. At the time you approached the Motion Picture Patents Company with the proposition of establishing a censorship, how were you received? A. Very well received.

3 Q. Did the Motion Picture Patents Company show a desire or disposition to co-operate with you in arranging for the censorship of motion pictures? A. The Motion Picture Patents Company stated that they had already started a trade censorship within their own group, and that they were willing to submit their films to our Board experimentally, and they continued to submit them for the experimental period.

Q. How long did this experimental period last? A. It was indefinite, and we have never had any contracts, so that any manufacturer was free to withdraw at any time he saw fit, and it is still handled in that way.

4 Q. How is the Board of Censorship made up? A. It was made up through calling in these eleven civic agencies, which formed a general committee, and this general committee controlled the policy, finances, standards, and everything else, and chose the executive officers of the Board, the clerks and the secretaries. No member of the General Committee is paid anything, or is allowed to have any interest, direct or indirect, in motion pictures. This general committee is free to enlarge its own membership, and is in every way the court of last resort in standards, etc. The General Committee called together a special Censoring Committee of disinterested men and women, and the Censoring Committee now has about one

hundred and forty members. The members of the Censoring Committee are also not paid for their services, and are not allowed to have any interest in the film business. The only paid agents of the Board are its secretaries, who do not vote on the films, or policies, or on any other matter. The Board's expenses relate to the payment of secretaries, rent, a stenographer, etc. These expenses have been all along met in the main by the trade interests. There have been periods when it has been necessary to go to the general public for contributions.

Q. At the beginning of the censorship, what interests contributed towards the expenses? A. For the first three months the expenses were met by the New York exhibitors. The Board then became National, and the Motion Picture Patents Company began contributing at the rate of \$450 per month, and for about a year there was no other contribution, although the independents were invited to contribute.

Q. During that year were you censoring the independent films? A. Yes.

Q. And at the expiration of a year or thereabouts, the independents began to contribute? A. Yes, sir, they began to contribute at the beginning of 1911, and have been contributing more or less since that date. The total contributions to the Board from the trade interests down to January 1st, 1914, were \$25,544 from the members of the Motion Picture Patents Company, and \$3,047.50 from members of the independent groups. In addition, the People's Institute contributed something over \$5,000 in free executive services during this time. Do you want any more information about that?

Q. Yes, go on. A. The Motion Picture Patents Company increased its contribution from \$450 to \$900 per month. This increase was based on a plan that the Board had adopted for encouraging the general regulation of motion picture shows, and the more extensive use of educational motion pictures. The independent companies, while they did submit their films since the beginning of the work, have only recently begun to contribute anything like a fair share to the censorship, and at present the total independent contribution is \$350 per month, and the Motion Picture Patents Company's contribution is \$900, whereas the reels censored for the independent companies in January, 1914, were five hun-

1 dred and seventeen, and for the Motion Picture Patents Company two hundred and eighty-four. These contributions are voluntary, and the Board continues to censor whether there are any contributions or not, and its Censoring Committees never know, unless they make special inquiry, whether a given manufacturer is contributing.

2 Q. Do you receive the contributions you have described as coming from the Motion Picture Patents Company, from that company direct? A. The contributions from the Motion Picture Patents Company reach the Board of Censorship through Mr. J. J. Kennedy, and our understanding is he secures these contributions from the members of the Patents Company group, although we do not know how the burden is distributed. The independent companies contribute through the Mutual Film Company and the Universal Film Company.

3 Q. Have the licensed producers, or the Motion Picture Patents Company at any time attempted to influence the judgment or interfere with the decisions of the Board of Censorship in any way? A. The Motion Picture Patents Company has never attempted to interfere or even make suggestions. Occasionally an individual manufacturer rebels against the Board's standard as applied to him. This happens every few months in the Patents Company group, and in the other groups, but it is regarded as that manufacturer's fight. Except for these protests, we can say that neither the Patents Company group nor any of the independent groups have ever attempted to interfere, and in fact they have not given us as many suggestions as we have desired, as all of the trade groups seem to have the view that they had better not interfere with the Board, or even give the appearance of interfering with it.

4 Q. Have the licensed producers, or the Motion Picture Patents Company at any time attempted to use the Board of Censorship as a means of harassing or interfering with the business of the independent producers? A. No, sir. That question is itself answered by the fact that the independent producers have all along voluntarily submitted their films, and are now submitting more films than the Patents Company. The Patents Company group have frequently urged the Board to make every effort to censor all films without exception because the Board's work cannot be effective to prohibit any manufacturer, unless all manufacturers, or substan-

tially all, are submitting their films. The independent producers are equally anxious to have all of the Patents Company's films censored.

Q. Are you able to tell us the number of licensed and unlicensed motion picture subjects examined by the Board of Censors in 1912 and 1913? A. From January 1st, 1911, to October 1st, 1911, there were one thousand five hundred and seventy-nine Patents Company subjects, and nine hundred and nine independent subjects; from November 1st, 1911, to October 1st, 1912, there were two thousand four hundred and seventy-seven Patents Company, and eighteen hundred and fifty-one independent subjects. Then, taking months in 1913 and 1914: in February, 1913, there were two hundred and twenty-nine Patents Company, and two hundred and thirty-eight independents; in March, 1913, two hundred and twenty-nine Patents Company, and two hundred and one independents; in April, 1913, two hundred and seventy-one Patents Company, and two hundred and forty-seven independents. The last month, January, 1914, Patents Company, two hundred and fifty-six subjects, and independent companies two hundred and seventy-six subjects. In January, 1914, two hundred and eighty-four Patents Company reels were censored, and five hundred and seventeen independent reels. The greater number of the independent reels is accounted for by the fact that the independent group includes the most of the feature and State Rights companies, which release subjects of two, three, four, and five reels.

Q. How many independent subjects did you say were censored in January, 1914? A. Independent, 276.

Q. And how many reels did that require? A. Five hundred and seventeen reels. That includes, we believe, approximately all of the independent output, except the Kinemacolor, and an occasional feature film, which is put out without our knowledge, or in some other part of the country.

Q. At the beginning of the censorship did you have practically all of the independent producers as you have now? A. No, at the beginning, the control over the independents was loose. The independents were not organized, and after we obtained an independent manufacturer he was liable to withdraw for weeks or months. The Board gradually brought all of the independents in through various kinds of pressure, and in particular through bringing to bear on the independent exchanges all over the country the pressure of the

1 Mayors, Police Chiefs, and civic societies who are in correspondence with the National Board. For more than a year, all the regular independent producers and most of the feature companies have been submitting in just as regular a way as the Patents Company group.

Q. Have you observed during the period of censorship whether the independent producers furnish more subjects with multiple reels than the licensed producers? A. They do, for the reason that the feature film is likely to be the subject for multiple reels, and most of the feature films have
2 been independent productions, and that is still true, although the Patents group are producing more multiple reels than ever before.

Q. I understood you to say that at the beginning of the censorship the censors found it necessary to condemn approximately ten per cent.? A. Yes, sir, that is true at the beginning, but that might be qualified. At the beginning the manufacturers frequently brought films to the Board they knew in advance would be condemned, whereas now they do not make film that would be condemned, or never submit it, knowing the Board would condemn it, and the
3 ratio of condemned film has been cut way down now, between one and two per cent.

Q. Have you observed whether or not the criticisms which prevailed at the time of the formation of the National Board of Censorship have been to a large degree silenced? A. The drastic criticisms have been to a large degree silenced, and the movement for more police and local censorship has remained at a standstill, taking the country as a whole. The Board, however, does not itself win the approval of all elements of the country, as it is impossible for any censor to satisfy everybody so long as the same film is seen by young
4 people, and by old people, and by the cultured and the ignorant, but in general the moving picture is, we believe, the cleanest form of theatre now before the American people, and contains a larger proportion of educational matter than any other form of theatre.

Q. Will you tell us something about the actual work of passing upon motion pictures and criticizing them, how it is done, and where? A. The censoring is done by this large sub-committee on censoring of about one hundred and forty members. This committee is broken up into smaller committees, which are at work every day in New York, except

Sunday. Well, practically two or three committees are at work on the same day. The inspection of films is carried out in the studios of the various manufacturers. All the Patents Company product is brought to the studio of the Motion Picture Patents Company, at 80 Fifth Avenue. The Mutual and Universal companies have their studios, and the feature companies provide studios. Every foot of every film is looked at by the censoring committee, sample copies being submitted to it. If there is a disagreement in the censoring committee, or if the Secretary disagrees, or if the manufacturer is aggrieved, the film is then appealed to the General Committee which passes on it with final power. As soon as the Board censors the film, it is listed, or is condemned, or passed, or passed with eliminations, and a bulletin is sent each week to something over three hundred cities containing statements of all the approved, condemned, or changed films.

MR. GROSVENOR: When you say a bulletin is sent to the cities, to whom is it sent?

The Witness: To a representative who is the active agent in that city, be it the Mayor, Police Chief, or some civic body which has concerned itself. In Chicago, to Major Funkhauser, Chief of the Morals Police; in Boston, to the Chief of the License Bureau; in Philadelphia, to the Children's Protection Society; to the appropriate agent in whatever city this bulletin goes each week; and when the Board fears that its verdict may not be lived up to by the producer a special bulletin is sent out, and also the exchanges are notified by telegraph so that they will be warned in advance. This routine is invariable, whether the film has been condemned as a whole, or whether only a part of it has been condemned and the manufacturer has refused to make the change suggested.

Q. What are the amounts of the contributions to the support of the National Board of Censorship made by the licensed producers and the unlicensed producers within the last few months? A. Contributions are now coming in on regular monthly payments at the rate of nine hundred dollars per month from the Motion Picture Patents group, and three hundred and fifty dollars from the independent groups. Occasionally a few feature film companies will make small and irregular contributions. The independent contributions

- 1 come \$150 from the Universal Company, and \$200 from the Mutual Company. The contributions from the trade are now meeting all the executive expenses of the Board, and the Board's policy is to have the trade bear this burden as completely as the trade is willing, but only as much money is solicited as is needed for executive expenses. The largest salary paid by the Board is \$2,000 to its executive secretary. I might add here that the Board has no legal power in New York or any other city, and has never sought legal power.
- 2 Its relation to the authorities of the various cities and States and to the Federal Government is purely advisory. I might insert this as relevant to my testimony. The Board treats with the various trade representatives without reference to their being grouped as rivals or otherwise, and the committees are constantly interchanging from one group to another. In fact, the most of the members of the committee do not know the difference between the various trade groups.

By Mr. KINGSLEY:

- 3 Q. Mr. Collier, what was the last month of 1913 of which you have given us a comparative statement of the number of subjects censored, produced by the licensed and the unlicensed producers? A. That was January, 1913.

Q. I say, what was the last month of 1913, a record of which you gave us? A. The last was April, 1913, and then I jumped from April to January.

Q. Have you the figures from April, 1913, to January, 1914? A. Yes, sir.

Q. They could be easily compiled? A. Those could be compiled.

- 4 Q. Will you have them compiled for us? A. Yes, sir. These are merely notes. I can compile them, and certify to them in any way you wish. I might insert one of our weekly bulletins. The bulletin for the week ending February 21st, 1913. That contains a complete statement of our work. The Board's reports of films passed are complete, and are always open to public inspection, as also its finances, and even its correspondence files.

Q. You have given us a list representing the work done by the National Board of Censorship for the week ending February 21st, 1914? A. Yes, sir.

Q. Is that a complete and correct list? A. It is the list

we have sent of over 300 cards. I presume it to be complete. It is taken from our card records.

1

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: I make the same objection to this exhibit (133) as I made to this entire examination, that it is immaterial and irrelevant and has no bearing on any of the issues.

The list produced by the witness and offered in evidence by defendants is marked by the Examiner "Defendants' Exhibit No. 133," and is as follows:

2

Defendants' Exhibit No. 133.

THE NATIONAL BOARD OF CENSORSHIP OF MOTION PICTURES

Established by the People's Institute
70 Fifth Avenue
New York City, N. Y.

The information contained in this list is intended SOLELY for the benefit of the organizations, civic officials and official correspondents of the Board to whom it may be sent. It is not intended for the Trade, the general public, newspapers, etc., until at least after the date of release of any particular picture.

3

Criticism of specific pictures will be given the fullest attention if forwarded to the Secretary of the Board.

Bulletin of the National Board of Censorship for week ending February 21, 1914.

MOTION PICTURE PATENTS COMPANY

The Long Cold Night	Essanay
Presto Willie, Magician	"
Lord Chumley 4 Reels	Biograph
Shorty Makes a Bet	"
Blame the Tailor	"
Grass County Goes Dry 2 Reels	Essanay
The Warning	"
The Girl, The Cop, the Burglar	"
The Counter Melody	"
Sophie's Birthday Party	"

4

1	A Hobo Philosopher	General Melies
	A Fable and Its Moral	"
	Three Bags of Silver	Selig
	Her Ladyship	"
	The Idler	Vitagraph
	The Mischief Maker	"
	A Model Young Man	"
	Auntie	"
	Dr. Polly	"
	A Pair of Friends	"
2	Cypress Logging in Florida	Kalem
	The Family Skeleton	"
	The Award of Justice 2 reels	"
	His Indian Nemesis	"
	A Trip to the Moon	Lubin
	So Long Count	"
	The Telltale Star	"
	The Girl and the Cafes 3 reels	"
	The Strange Melody 2 reels	"
	Cathedral and Leaning Tower of Pisa	Selig
8	Suppressed News	"
	The Speedway of Despair	"
	Kid Pink and the Maharajah	"
	Napoleon or How Heroes are Made	Cines
	The Weaker Brother 2 reels	Lubin
	The Five Jugglers	Selig
	Elizabeth's Prayer	"
	Cinessimo is Lucky	Cines
	Among the Reptiles	Eclipse
	Religious Customs in British India	"
4	Dupin's New Coat	"
	Putting One Over	Edison
	The Brass Bowl 2 reels	"
	A Night Out	"
	The Borrowed Finery	"
	Dinkelspiel's Baby	"
	A Mutual Misunderstanding	"
	A Hot Time in Snakeville	Essanay
	Luck in Odd Numbers	"
	The Interference of Broncho Billy	"

Oh, Doctor	"	1
Single Handed	"	
Katrina 5 reels	Pathe	
The Wasted Years 2 reels	"	
The Picture		
Chains of Bondage 2 reels	Essanay	
was passed subject to the following change: Eliminate subtitle "Nina Cannot Understand Buckley's Unfatherly Love."		
The Picture		
The Cocaine Traffic 6 reels	Lubin	2
was passed subject to the following changes:		

(1) The scene of the "bournie" party to be eliminated.

(2) The scenes in the house of prostitution to be trimmed, as far as is possible without interfering with the action. This elimination applies to the scene where the girl is shown sitting on the lap of a man, and the scene where the prostitutes dance just before the raid is made on house.

(3) Scene where the girl who is in search of her brother is doped by the use of the needle in the railroad station by the agents of the white slavers to be eliminated entirely.

(4) The subtitle "She Uses as Much Cocaine as I Do" referring to the scene where the young husband is telling the cocaine king of the habit which the drug has induced in his daughter, to be changed to read "She Uses Cocaine, Too."

(5) The scene where the young husband infuriated by the cocaine, is shown strangling his wife to be trimmed so as to modify the struggle as much as is possible without interfering with the action.

The Picture

Maud the K'Nut	Eclipse
was passed subject to the following eliminations: Cut out entirely the close up view of the scene where Maud and the actress are shown dancing the tango.	

1

OTHER INDEPENDENT COMPANIES

The Crucible	American
The Pursuer Pursued	"
Village School Days	Apollo
The Relic	Broncho
The Path of Genius 2 reels	Kay Bee
Desert Gold 2 reels	"
A Birthday Present	Komic
The Imposter	"

2

Getting a Suit Pressed	"
The Reform Candidate 3 reels	Majestic
The Rival Barbers	"
All's Well that Ends Well	Princess
The Musician's Wife	Reliance
The Green-Eyed Devil 2 reels	"
Our Mutual Girl Series 6	"
When Fate Frowned	"
The Scientist's Doll	Thanhouseer
The Tribesman 2 reels	"

3

The picture	
A Child of the Desert	American
was passed subject to the elimination of the subtitle "I Will Stake that Beauty against your Winning."	

The Picture	
A Film Johnny	Keystone
was passed subject to eliminating the two vulgar gestures which Johnny makes with his fingers to his nose.	

4

The picture	
Between Showers	Keystone
was passed subject to the following eliminations:	

(1) Eliminate the gestures which the character you call "another gallant" makes with his fingers to his nose.

(2) Eliminate the act of Sterling biting the girl's nose.

The picture
 Little Billy's Cousin Keystone
 was passed subject to this elimination: Reduce all scenes in which the two little boys are fighting, to one scene, and make that a flash.

The film
 Their Best Friend Thanhouser
 was passed subject to the following eliminations:

(1) Eliminate the subtitle "He Puts a Sleeping Potion into the Wine."

(2) Reduce close view of the uncle putting the sleeping potion into the glass of wine when he stands before the side-board, with the exception of a flash showing enough of the scene to make it plain that the butler is aware of what the man has done.

UNIVERSAL FILM MFG. COMPANY

Why Universal Ike Left Home	Universal
Baldy Belmont Nearly a Hero	Victor
Dazzle's Black Eye	Universal
The Fat and the Thin of It	Crystal
Sheridan's Ride	"
A Bad Egg	"
Those Persistent Old Maids	"
Animated Weekly	Joker
Scooped by Cupid	Nestor
Hearts and Flowers	"
Balance	Joker
The Wrong Miss Wright	Nestor
The Yaqui's Revenge 2 reels	Bison
The Stirrup Brothers 2 reels	Eclair
Pretzel Captures the Smugglers	Fronteir
The Opal Ring 2 reels	I M P
The Mystery of Buffalo Gap	Frontier
The Acid Test 2 reels	Victor

- 1 The picture
The Embezzler 2 reels Bison

was passed subject to eliminating the close up view of man opening the safe, prior to the time when the safe is actually seen open. This involves eliminating the picture showing the method used to avoid leaving finger prints.

- 2 The picture
Traffic in Soles Joker
was passed subject to the following eliminations:

(1) Eliminate from the scene at the roller skating rink that portion of it where the men and women all fall down, their heads to the back of the stage and their feet to the front of it. The portion of this scene objected to is where the women are shown with their skirts up around their waists displaying their lingerie, etc.

- 3 (2) Eliminate the shovelling of the garbage into a pile and the throwing of it on to the man.

 The picture
Tom's Choice Joker
was passed subject to the following elimination: Eliminate the gesture which one of the characters makes by placing his fingers to his nose in the scene showing the yard of the insane asylum.

4 FEATURE FILM BULLETIN

Paradise Lost 4 reels	Great Northern
In Mizzoura 5 reels	All Star
A Tiff and After	Gaumont
A Visit to Santiago Cuba	"
Judgment of the Jungle 3 reels	"
The Squaw Man	Lesky Feature
Rounding up Traffickers on Soles 3 reels	Feature Photo Play
Death the Conqueror 3 reels	True
The Coliseum at Rome 4 reels	"

The Light that Failed	3 reels	Wagner	1
The Hostage	4 reels	"	
The Two Consciences		Ambrosio	
The Eye of the Government		Warner Gene Gautier	
Saved by the Head Hunter		Warners	
The Pride of Jennico		Famous Players	
The picture			
The Great Derby	3 reels	Wagner	
was passed subject to the following elimination: Cut out entirely the up view of Sarah Dancing.			
This occurs in reel two.			
Attention is called to the special feature called			
Shackled Souls	3 reels	Dragon	2

which was shown to the National Board some three weeks ago. The Board felt that this picture should not be publicly exhibited in its original form. Drastic changes were suggested to the manufacturer with request that it be re-submitted to the Board for final action. This request has not yet been complied with. "Shackled Souls" is therefore drawn to the attention of our correspondents. 3

The following changes in the opinion should be made in the picture before it is allowed to be exhibited:

(1) Eliminate any reference to the subtitles to any of the characters being white slavers.

(2) By means of subtitles, show that Burton has become infatuated with Elsie through the description of Johnson, who introduces Burton to her. Change the character of Johnson from that of trafficker to that of simply a friend of Burton. In other words, eliminate the idea that this man is mixed up in any white slave traffic. 4

(3) Eliminate the scene showing close up view in the hack, where Johnson discloses his identity.

(4) Insert the subtitle to the effect that Burton persuades Elsie to attend the garden party and supplies her with the necessary clothes.

1 By Mr. KINGSLEY:

Q. You spoke of manufacturers not now submitting subjects which they knew would be rejected. Did you mean by that that such subjects are prepared by the manufacturers and not submitted to the Board of Censorship, and nevertheless put on the market? A. No, I mean, a manufacturer inadvertently gets from his studio a film where there have been scenes, or a plot inadvertently made, such as our Board would condemn, and, knowing our standard, does not submit the film to us, but suppresses it, or that
 2 importers of films frequently receive films from Europe, a character of film they know we would condemn, and they reject it and return it, and never submit it to us.

Mr. GROSVENOR: No cross examination.

Thereupon, J. WESLEY ROSENQUEST, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

3 Direct examination by Mr. KINGSLEY:

Q. What is your business? A. Theatrical business.

Q. Do you own or operate a theatre? A. Yes, sir, the Fourteenth Street Theatre, now.

Q. Just where is the Fourteenth Street Theatre located? A. At Nos. 105, 107 and 109 West Fourteenth Street.

Q. What kind of program do you have at the Fourteenth Street Theatre? A. Moving picture and vaudeville combined.

4 Q. Did you use motion pictures as a part of your program in 1908? A. Yes, sir.

Q. In 1908, when you were using motion pictures as a part of the program in your theatre, from what rental exchange did you procure them? A. From George Kleine, who at that time had an exchange on 6th Avenue, in the neighborhood of 37th or 38th Street.

Q. And for how long a period did you continue to secure motion pictures from George Kleine? A. From September 27th, 1908, to January 31st, 1909.

Q. From whom did you secure motion pictures after

that? A. From the Actograph Company, from January 31st, 1909, to December 22nd, 1909. 1

Q. Were the pictures that you were securing from the Actograph Company licensed pictures? A. Yes; they were what we called the "association" pictures at that time. I don't know whether they were licensed or not, now.

Q. After you ceased to take service from the Actograph Company, from whom did you secure your program? A. From the United Film Renting Company, from December 22nd, 1909, to February 1, 1910.

Q. Did the United Film Renting Company deal in licensed or unlicensed pictures? A. The so-called independent pictures at that time. 2

Q. At the time you left the Actograph Company and went to the United Film Renting Company, did you intend to change from the licensed to the independent service? A. Yes, sir, I did, for a reason.

Q. Will you tell us what reason actuated you in making that change?

Mr. GROSVENOR: Objected to as incompetent, irrelevant and immaterial. 3

The Witness: All of my competitors were using the "association" pictures, and I found I had to depart—not that I wanted to, but that I had to in order to get custom. The Union Square people, and people all over on the east side of 14th Street, were using the "association" pictures, and I frequently heard people come into the theatre and say, "We saw that at Union Square," or, "We saw it somewhere else," and I determined to change for my own benefit.

Q. You found that the duplication of pictures in your immediate vicinity injured your business? A. Yes, sir. 4

Q. And you wanted a distinct and different program? A. Yes, sir.

Q. And when you left the Actograph Company, were you able to get a distinct and definite program? A. Yes, sir, from the Actograph Company?

Q. When you left the Actograph Company, were you able to get from the United Film Renting Company a distinct and definite program? A. Yes, sir.

Q. How long did you say you continued to receive serv-

1 ice from the United Film Renting Company? A. From December 22nd, 1909, to February 1st, 1910.

Q. After February 1st, 1910, from what exchange did you secure service? A. From the Empire Film Exchange.

Q. Was that an independent exchange? A. Yes, sir.

Q. How long did you continue to take independent service from the Empire Exchange? A. From February 1st, 1910, to October 22nd, 1911.

Q. After October 22nd, 1911, from what exchange did you take pictures? A. The General Film Exchange, I think it is.

2 Q. How long did you continue to take service from the General Film Company? A. From October 21st, 1911, to September 30th, 1912.

Q. And after September 30th, 1912, from what exchange did you secure your motion picture service? A. Then I went to the Western Film Exchange.

Q. Did the Western Film Exchange deal in independent pictures? A. Yes, sir.

3 Q. Have you continued to secure service from the Western Film Exchange since that time? A. Not exclusively, but most of the time. In addition to the Western Film I had the Kinemacolor from February 9th, 1913, to November 23rd, 1913, and also the General Film from September 15th to November 30th. I had three different kinds I was showing at one time, that is the Independents, the Patents and the Kinemacolor.

Q. So that during the year 1913 at one time you showed three different kinds of pictures? A. Yes, sir.

Q. The licensed? A. Yes, sir.

Q. The unlicensed? A. Yes, sir.

Q. And the Kinemacolor? A. Yes, sir.

4 Q. And showed them at the same time? A. Yes, sir, during the same performance.

Q. Since November 30th, 1913, from what exchange have you been obtaining your motion pictures? A. Western Film Company.

Q. Since that time you have been using largely the independent pictures? A. Yes, sir, mostly, except during that period when I told you I used all three different kinds.

Q. Are you able to interest your audiences with the unlicensed program of motion pictures? A. Oh, yes.

Q. Do you have any difficulty about getting a complete
unlicensed program? A. No, sir. 1

Q. Do you find it better to run a non-conflicting unli-
censed program rather than a conflicting licensed program?

A. You mean conflicting with other theatres?

Q. Yes? A. Yes, sir, I do.

Q. Does your theatre continue to prosper? A. Yes, sir.

Q. Do you intend increasing the proportion of motion
pictures in your program, or have you given that thought any
consideration? A. Yes, I have given it a great deal of con-
sideration. I intend doing it, I think, during the Summer
months. 2

Q. What is the seating capacity of your theatre, Mr.
Rosenquest? A. About twelve hundred.

Cross examination by Mr. GROSVENOR:

Q. How large a portion of your daily performance or
program consists of moving pictures? A. It depends on the
length of the vaudeville acts. I usually have six vaudeville
acts, lasting—well, I attempt to give a show that will last
about two and a half, or two and three-quarters hours, and
sometimes have six vaudeville turns that will take seventy
minutes, and sometimes the six will take a hundred minutes,
and I would say I am running anywhere from three, to four
or five reels of pictures in one show without repeating. I
say it would depend entirely on the length of the vaudeville.
Sometimes an act will take twenty minutes, and another one
then to take its place will take from ten to twelve minutes. 3

Q. You do not run an exclusive motion picture theatre?

A. That is a side issue.

Q. The principal part of your business has been vaude-
ville? A. Yes, sir.

Q. And that has been true of your theatre during this en-
tire period respecting which you have testified? A. Yes, sir. 4

Thereupon, ANNA S. MATTHEWS, the next witness pro-
duced by the defendants, of lawful age, being first duly sworn
by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Miss Matthews? A. Plainfield,
New Jersey.

1 Q. In what business are you engaged? A. I am engaged in the business of Supervisor of the Information Division of the Motion Picture Patents Company.

Q. How long have you been the Supervisor of the Information Division of the Motion Picture Patents Company?

A. Since the latter part of February, 1909.

Q. What are the particular duties with which you are charged? A. The supervision of the records relating to the motion picture theatres in the United States.

Q. By that do you mean you are in charge of those records? A. Yes, sir.

2 Q. And that you supervise the amendments, corrections and changes in them? A. Yes, sir.

Q. Does the Motion Picture Patents Company keep a complete list of the motion picture theatres in the United States? A. Yes, sir.

Q. Is this the list used by the business management of the Motion Picture Patents Company in sending out circulars and announcements to the trade? A. Yes, sir.

Q. Does this list embrace both the licensed and the unlicensed theatres? A. Yes, sir.

3 Q. Is this list approximately accurate and complete? A. Yes, sir.

Q. Does it contain all of the licensed theatres in the United States? A. Yes, sir.

Q. If any motion picture theatres are missing from it, are they licensed or unlicensed theatres? A. Unlicensed.

Q. During the period in which these lists have been in your care or supervision have you endeavored to correct them from time to time? A. Yes, sir.

4 Q. How many times have you changed them since July 1st, 1910? A. Completely six times, and partially all the time.

Q. And when you say "partially all the time" do you mean that you are constantly endeavoring to make the changes and corrections in them that the changes in the business warrant? A. Yes, as the information we receive, according to changes in ownerships, and so on.

Q. Can you give us the dates of these complete checking periods? A. Yes, sir.

Q. And what were they? A. October 31st, 1910; January 30th, 1911; July 3rd, 1911; December 18th, 1911; July 7th, 1912, and July 21st, 1913.

Q. What cities or towns were investigated when you checked your list on or about October 31st, 1910? A. All towns where the population exceeded eight hundred according to the 1900 census, and towns of less population for which we had a theatre card in our files. 1

Q. That is to say, whether a town had 800 population or not, if you had information there was a theatre there or the card showed a theatre there, you checked that town? A. Yes, sir.

Mr. GROSVENOR: Has the lady testified when she began the work? 2

The Witness: February, 1909. I might add, I was in charge all the time with the exception of a few months I was away. I was out on account of the illness of my mother.

Q. Did you know the way the checking was carried on? A. Yes, sir.

Q. At each one of these times you have referred to? A. Yes, sir, I was there. I had charge of the checking.

Q. What was the method of investigation adopted when you checked your list on or about October 31st, 1910? A. In cities where an exchange was located, the exchanges were requested to furnish a list of theatres usually exhibiting motion pictures, with the exception of New York, where we procured from the Bureau of Licenses a list of theatres, and checked that with our records, and we had them personally investigated; and in Brooklyn, Jersey City, and Newark we procured lists of the theatres from the Bureau of Licenses, or City Clerks, and checked them with our records, and we investigated them, and for the other cities and towns we mailed Form No. 298, to the City Clerk, requesting a list of theatres usually exhibiting motion pictures. 3

Q. Did you have any special way of checking up the theatres in a city? A. In Chicago we tried to procure lists from the exchanges, and from the Bureau of Licenses there, and we checked those with our records, and investigated them personally, too. 4

Q. If you received no reply from a given town to the postal card of inquiry, what did you then do? A. We addressed Form 311 to the Postmaster, requesting him to turn the card over to the official prepared to supply the information.

1 Q. In the process of securing information regarding the theatres in the various towns checked, how many cards of inquiry or follow-ups did you send? A. You mean after the first request?

Q. No, suppose you did not get any answer to the request, you then sent another request, did you not? A. Yes, sir.

2 Q. Will you tell us just what you did, and give us the story of the whole process of checking up? For instance, if you sent a card and you didn't get a satisfactory reply, you took some other steps. Tell us what other steps you took after waiting a reasonable time for a reply? A. We first sent Form 298 to the City or Town Clerk, requesting a list of theatres. If we received no reply in a given time, we sent Form 311 to the Postmaster, requesting him to turn it over to the official prepared to give the information, and if no information was received Form 314 was sent to an exhibitor if we had a record of a theatre. If not, Form 452 was mailed to the City Clerk. If no reply was received, then Form 467 was mailed to the City or Town Clerk, or the Postmaster, or an exhibitor, or an express company, or a Justice of the Peace or to some other official in the town.

3 Q. Did that exhaust the list of forms you sent out for information in checking? A. That is for the original information. When we received one of these forms back on which they did not give complete information we re-listed the theatres already given on the return card on Form 299 and requested additional information on theatres indicated by a question mark, and if on the return card any theatres we had in our records were not listed, we listed the theatres not given on that return card, 313, and requested information regarding those theatres.

4 Q. Do these forms contain the numbers on the cards themselves? A. Yes, sir, on some of them they are on the front of the card, and on the others, on the back.

Q. Could you compile a list of those cards from any you have in your possession? A. Yes, sir.

Q. Beginning with 298? A. 298, 311, 314, 452, 467, 299 and 313.

Q. You have them there? A. Yes, sir.

Mr. KINGSLEY: I offer them in evidence.

The cards produced by the witness and offered in evidence are marked by the Examiner: Card Form 298, as Defendants' Exhibit No. 134, Card Form 311, as Defendants' Exhibit No. 135, Card Form 314, as Defendants' Exhibit No. 136, Card Form 452, as Defendants' Exhibit No. 137, Card Form 467, as Defendants' Exhibit No. 138, Card Form No. 299, as Defendants' Exhibit No. 139 and Card Form No. 313, as Defendants' Exhibit No. 140, and are as follows:

Defendants' Exhibit No. 134.

Form 298

U. S. POSTAL CARD.

City or Town Clerk.

80 Fifth Ave., New York, , 1910.

Dear Sir:

We would appreciate your furnishing us with the names of places and exhibitors, usually showing Motion Pictures in your city or town. Attached please find a return postal for your convenience in replying.

Thanking you for the courtesy we feel sure you will extend us, we remain,

Very truly yours,

MOTION PICTURE PATENTS COMPANY.

1

U. S. POSTAL CARD.

(Reply Card.)

MOTION PICTURE PATENTS COMPANY,

80 Fifth Avenue,

New York City.

Name of Theatre or Place of Exhibition.	Name of Exhibitor.	Active or Inactive *
--	-----------------------	----------------------

2

.....
.....
.....
.....
.....
.....

The above is a list of the places now exhibiting, or that usually exhibit, Motion Pictures in this vicinity.

Population.....	Signed.....	City or Town Clerk.
Corrected to.....	.....	Name of City or Town.
Date.....	.....	Name of State.

3

* If motion pictures are being shown at present, indicate with the word active; if usually shown but the theatre or place of exhibition is now closed, temporarily for repairs or for the summer, indicate with the word inactive.

Note.—We are stating the population of your town as noted on our records. If incorrect, please place the correct population opposite the words: "Corrected to."

4

Defendants' Exhibit No. 135.

Form 311

U. S. POSTAL CARD.

POSTMASTER.

80 Fifth Ave., New York, Sept. , 1910.

Dear Sir:

We would appreciate a list of names of the places and

exhibitors usually showing Motion Pictures in your city or town. 1

We have written the City or Town Clerk, but have received no reply. Will you please turn this card over to the official who is prepared to furnish us with the information requested?

Thanking you for the courtesy we feel sure you will extend us, we remain,

Very truly yours,

MOTION PICTURE PATENTS COMPANY. 2

U. S. POSTAL CARD.

(Reply Card.)

MOTION PICTURE PATENTS COMPANY,

80 Fifth Avenue,

New York City.

Name of Theatre or Place of Exhibition.	Name of Exhibitor.	Active or Inactive *
--	-----------------------	----------------------

3

.....

.....

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.....

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.....

The above is a list of the places now exhibiting, or that usually exhibit, Motion Pictures in this vicinity.

Population.....	Signed.....
Corrected to.....	.....Name of City or Town.
Date.....	.....Name of State.

4

* If motion pictures are being shown at present, indicate with the word active; if usually shown but the theatre or place of exhibition is now closed, temporarily for repairs or for the summer, indicate with the word inactive.

Note.—We are stating the population of your town as noted on our records. If incorrect, please place the correct population opposite the words: "Corrected to."

1 **Defendants' Exhibit No. 136.**

Form 314

U. S. POSTAL CARD.

80 Fifth Ave., New York, , 1910.

Dear Sir:

2 We would appreciate your furnishing us with the names of places and exhibitors usually showing Motion Pictures in your city or town. Attached please find a return postal for your convenience in replying.

Thanking you for the courtesy we feel sure you will extend us, we remain,

Very truly yours,

MOTION PICTURE PATENTS COMPANY.

U. S. POSTAL CARD.

(Reply Card.)

3 MOTION PICTURE PATENTS COMPANY,

80 Fifth Avenue,
New York City.

Name of Theatre or Place of Exhibition.	Name of Exhibitor.	Active or Inactive *
--	-----------------------	----------------------

.....
.....
.....
.....
4 .....	.....	.....
.....

The above is a list of the places now exhibiting, or that usually exhibit, Motion Pictures in this vicinity.

Population.....	Signed.....
Corrected to.....	.....Name of City or Town.
Date.....	.....Name of State.

* If motion pictures are being shown at present, indicate with the word active; if usually shown but the theatre

or place of exhibition is now closed, temporarily for repairs or for the winter, indicate with the word inactive. 1

Note.—We are stating the population of your town as noted on our records. If incorrect, please place the correct population opposite the words: "Corrected to."

Defendants' Exhibit No. 137.

Form 452

U. S. POSTAL CARD. 2

50 Fifth Ave., New York, , 1910.

Dear Sir:

For statistical purposes we desire to secure the names of places and exhibitors usually showing Motion Pictures in your City or Town. A former inquiry sent you has no doubt been mislaid. We would appreciate your furnishing us with this information, and attach a return postal for your convenience in replying.

We have received since September the 1st lists from 75 per cent. of the towns or cities written to, and trust we will secure the balance by November the 10th. 3

Thanking you for the courtesy we feel sure you will extend us, we remain,

Yours very truly,

MOTION PICTURE PATENTS COMPANY.

1

U. S. POSTAL CARD.

(Reply Card.)

MOTION PICTURE PATENTS COMPANY,

80 Fifth Avenue,

New York City.

Name of Theatre or Place of Exhibition.	Name of Exhibitor.	Active or Inactive *
--	-----------------------	----------------------

2

.....
.....
.....
.....
.....
.....

The above is a list of the places now exhibiting, or that usually exhibit, Motion Pictures in this vicinity.

Population..... Signed.....

Corrected to..... Name of City or Town.

Date..... Name of State.

3

* If motion pictures are being shown at present, indicate with the word active; if usually shown but the theatre or place of exhibition is now closed, temporarily for repairs or for the winter, indicate with the word inactive.

Note.—We are stating the population of your town as noted on our records. If incorrect, please place the correct population opposite the words: "Corrected to."

4

Defendants' Exhibit No. 138.

Form 467

U. S. POSTAL CARD.

80 Fifth Avenue, New York, Nov. 15, 1910.

Dear Sir:

Are there any places exhibiting Motion Pictures in your town?

Please answer No or Yes (with number if yes).

We attach return postal for your convenience in reply.

ing, and if you care to do so, we will appreciate any additional information you see fit to give us as to name of theatre, etc. 1

Thanking you, we remain,

Yours very truly,

MOTION PICTURE PATENTS COMPANY.

U. S. POSTAL CARD.

(Reply Card.)

MOTION PICTURE PATENTS COMPANY, 2

80 Fifth Avenue,

New York City.

Are there any places exhibiting Motion Pictures in your town?..... If so, how many?.....

Yes or no

State quantity.

If there are no places in your town exhibiting Motion Pictures, please state No, and return this card without further entry. If there are, state number, and if convenient for you to do so, please enter the names, etc., below. 3

Name of Theatre or Place of Exhibition.	Name of Exhibitor.	Active or Inactive *
--	-----------------------	----------------------

.....
.....
.....
.....

The above is a list of the places now exhibiting, or that usually exhibit, Motion Pictures in this vicinity.

Population.....	Signed.....
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Corrected to.....Name of City or Town.
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Date.....Name of State.
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* If motion pictures are being shown at present, indicate with the word active; if usually shown but the theatre or place of exhibition is now closed, temporarily for repairs or for the winter, indicate with the word inactive.

Note.—We are stating the population of your town as 4

- 1 noted on our records. If incorrect, please place the correct population opposite the words: "Corrected to."

Defendants' Exhibit No. 139.

Form 299

U. S. POSTAL CARD.

City or Town Clerk.

- 2 Dear Sir:

The list of names of places and exhibitors, usually showing Motion Pictures in your City or Town, which you have so courteously furnished us, has been duplicated on the attached return postal card.

We would appreciate your advising us on the return postal, whether the Places of Exhibition indicated by ? are at present active or inactive.

Thanking you, we remain,

Yours very truly,

3

MOTION PICTURE PATENTS COMPANY.

U. S. POSTAL CARD.

(Reply Card.)

MOTION PICTURE PATENTS COMPANY,

80 Fifth Avenue,

New York City.

4	Name of Theatre or Place of Exhibition.	Name of Exhibitor.	Active or Inactive *

The above is a list of the places now exhibiting, or that usually exhibit, Motion Pictures in this vicinity.

Population..... Signed.....City or Town Clerk. 1
 Corrected to..... Name of City or Town.
 Date.....Name of State.

* If motion pictures are being shown at present, indicate with the word active; if usually shown but the theatre or place of exhibition is now closed, temporarily for repairs or for the summer, indicate with the word inactive.

Note.—We are stating the population of your town as noted on our records. If incorrect, please place the correct population opposite the words: "Corrected to." 2

Defendants' Exhibit No. 140.

Form 313

U. S. POSTAL CARD.

80 Fifth Ave., New York, , 1910.

Dear Sir:

A list of names of places and exhibitors formerly showing Motion Pictures in your vicinity has been entered on the attached return postal card. 3

We would appreciate your advising us of any errors or omissions on the return postal. In making corrections please follow the suggestions contained in the foot note.

Thanking you for the courtesy we feel sure you will extend us, we remain,

Very truly yours,

MOTION PICTURE PATENTS COMPANY. 4

1

U. S. POSTAL CARD.

(Reply Card.)

MOTION PICTURE PATENTS COMPANY,
80 Fifth Avenue,
New York City.

	Name of Theatre or Place of Exhibition	Name of Exhibitor	Street Number	Exhibitor's Number	Active or Inactive, Closed to Pictures, Duplicated or Dismantled*
2

Remarks					

Name of
City or Town..... State..... Signed.....

3 * If motion pictures are being shown at present, indicate with the word "active;" if usually shown, but the theatre or place of exhibition is now closed, temporarily for repairs or for the winter, indicate with the word "inactive." If motion pictures are only shown occasionally, indicate with the words "closed to pictures." If no longer fitted to give exhibitors of motion pictures, indicate with the word "dismantled;" if the same theatre is listed two or more times, indicate with the words "duplicate of," stating the number of the exhibitor duplicated.

4 If name of place of exhibition, exhibitor, or street address, is incorrect, please draw a line through the same as listed and place the correction in the next line below if missing, please supply same, particularly the Street Address.

By Mr. KINGSLEY :

1

Q. Were these cards, Miss Matthews, which you sent out, what are known as "return postal cards?" A. Yes, sir.

Q. Were you in charge of the checking of the list of motion picture theatres in the United States which you have testified was done or or about July 3rd, 1911? A. Yes, sir.

Q. Did you employ then substantially the same method you employed when correcting the list at the preceding checking? A. Yes, sir.

Q. Were you in charge of checking the lists of the Motion Picture Patents Company prepared by the Motion Picture Patents Company, as you have testified, on December 18th, 1911, July 7th, 1912, and July 21st, 1913? A. Yes, sir.

2

Q. What system did you follow in making those subsequent checkings and revisions of the Motion Picture Patents Company's lists under your charge? A. We followed substantially the same system as in the January and July, 1911, checkings, with the exception that we used—I might add on these subsequent checkings we used Form 483 and Form 315.

Q. Have you Form 483 and Form 315? A. Yes, sir. Do you want the letter we sent out with Form 315?

3

Mr. KINGSLEY: Yes; I offer in evidence Form 483, and Form 315 with the letter accompanying it.

Form 483 produced by the witness, and offered in evidence, is marked by the Examiner, "Defendants' Exhibit No. 141," and Form 315, with the letter attached produced by the witness, and offered in evidence, is marked by the Examiner, "Defendants' Exhibit No. 142, Sheet 1," and "Defendants' Exhibit No. 142, Sheet 2," and said exhibits are as follows:

4

1

Defendants' Exhibit No. 141.

Form 483

U. S. POSTAL CARD.

City or Town Clerk or Postmaster.

80 Fifth Ave., New York, Jan. 16, 1911.

Dear Sir:

2 Your courtesy in furnishing us with information regarding places showing Motion Pictures in your vicinity is appreciated and is of service to the Motion Picture industry.

To properly utilize the data you have furnished us, and avoid troubling you with unnecessary correspondence, it has been suggested that the Directory of Motion Picture Theatres be revised at stated periods.

We are sending you on the attached Postal Card a list as entered on our records. If you will make the Corrections and Additions necessary to bring this list up to date, noting whether Active, Inactive, Closed to Pictures or Dis-mantled, and return same to us, we will thank you.

3

Yours very truly,

MOTION PICTURE PATENTS COMPANY.

4

U. S. POSTAL CARD.

(Reply Card.)

MOTION PICTURE PATENTS COMPANY.

80 Fifth Avenue,

New York City.

Name of Theatre or Place of Exhibition	Name of Exhibitor	Active or Inactive, Closed to Pictures or Dismantled*
.	.	.
.	.	.
.	.	.
.	.	.
.	.	.
.	.	.
.	.	.
Remarks		
.....		
City or Town.....	State.....	Signed.....

* If motion pictures are being shown at present, indicate with the word "active;" if usually shown, but the theatre or place of exhibition is now closed, temporarily for repairs or for the season, indicate with the word "inactive." If motion pictures are only shown occasionally, and place is closed now, indicate with the words "closed to pictures." If no longer fitted to give exhibitions of motion pictures, indicate with the word "dismantled."

If name of place of exhibiton, or exhibitor, is incorrect, due to error or change, please draw a line through the same as listed, and place the correction on the next line below. If missing, please supply same.

Please add the names of any existing motion picture theatres or places of exhibition that are not entered.

1

Defendants' Exhibit No. 142.**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue, New York

Dear Sir:

We are revising the Directory of Motion Picture Theatres to cover Season changes.

Your courtesy in furnishing us with data for this Directory List is of service to the Motion Picture Industry and is appreciated.

2

To avoid troubling you with unnecessary correspondence, we are enclosing a list as entered on our records. If you will make the corrections and additions necessary to bring this list up to date, noting whether active, inactive, closed to pictures or dismantled, and return same to us, we will thank you.

Enclosed you will find a stamped addressed envelope for reply.

Yours very truly,

MOTION PICTURE PATENTS COMPANY.

3

By

ASM-

MOTION PICTURE THEATRES

City or Town.....Date State.....

Name of Theatre
or Place
of ExhibitionName of
ExhibitorStreet and
NumberActive or
Inactive
Closed to
Pictures or
Dismantled*

4

.....
.....
.....
.....

(This exhibit here contains 33 blank lines as above.)

* If motion pictures are being shown at present, indicate with the word "Active"; if usually shown, but the theatre or place of exhibition is now closed, temporarily for repairs

or for the season, indicate with the word "inactive." If motion pictures are only shown occasionally, and the place is now showing dramatic attractions or is being used for other theatrical purposes than the exhibition of motion pictures, indicate with the words "closed to pictures." If no longer fitted to be used for motion picture exhibitions or other theatrical purposes indicate with the word "dismantled."

If the name of place of exhibition, or exhibitor, is incorrect due to error or change, please draw a line through the same as listed, and place the correction on the next line below. If missing, please supply the same.

Please enter the names and addresses of any places exhibiting motion pictures that are not listed above.

Form 315 Rev. 2.

By Mr. KINGSLEY:

Q. Were Forms 483 and 315 in addition to the other forms about which you have testified? A. Yes, sir. The other forms were not used in any subsequent checkings; they were only used in the October, 1910, checking.

Q. As a result of these various checkings did you procure a list of exhibitors which had never been licensed? A. Yes, sir.

Q. Did you procure some names of theatres which had never been licensed from other sources than the checkings? A. Yes, sir.

Q. From what other sources? A. From correspondence and from Form 10.

Q. What was Form 10? A. Form 10 was a theatre information sheet.

Q. Have you a copy of that? A. Yes, sir, I think I have one copy. I gave it to you, Mr. Kingsley.

Mr. KINGSLEY: I offer it in evidence.

Form 10, offered in evidence, is marked by the Examiner, "Defendants' Exhibit No. 143," and is as follows:

1

Defendants' Exhibit No. 143.

Exhibitor—Form 10.

MOTION PICTURE PATENTS COMPANY,

80 Fifth Avenue,

New York.

February 15, 1909.

LICENSED EXHIBITOR.

2

Town—City State
 Street Address—No. Street—Avenue.
 Name of Theatre
 “ “ Exhibitor

Dear Sir:

Our records show the above. Kindly fill in any blanks, correct mistakes, and furnish any of the information you have that is called for on the blanks below.

Yours very truly,

3

MOTION PICTURE PATENTS COMPANY.

About Your Theatre.

Ruled out: Have you received your License Certificate?
 Answer Yes or No.....

Number of seats.....

“ “ shows given each day.....

“ “ days you are open each week.....

“ “ reels used at each show.....

“ “ illustrated songs each show.....

4

Length of each show.....minutes.

If Vaudeville is given—length of Vaudeville each show
minutes.

About other Motion Picture Theatres in your locality.

1. Name of Theatre.....
 Address No. Street—Avenue.
 Name of Owner.....
 Number of Seats.....
 Distance from your Theatre.....

2. Name of Theatre 1
 Address No. Street—Avenue.
 Name of Owner.....
 Number of Seats.....
 Distance from your Theatre.....
3. Name of Theatre.....
 Address No. Street—Avenue.
 Name of Owner.....
 Number of Seats.....
 Distance from your Theatre..... 2
4. Name of Theatre.....
 Address No. Street—Avenue.
 Name of Owner.....
 Number of Seats.....
 Distance from your Theatre.....

Printed at side of above exhibit : Send this sheet with added information to Patents Company by return mail. Use enclosed envelope.

3

By Mr. KINGSLEY :

Q. How many new theatres did you get from the checking of October, 1910? A. I cannot give the exact figures procured from that one checking, but including that checking and the time intervening between that and the January, 1911, checking, we procured approximately eighteen hundred and twenty-five.

Q. How many new theatres, approximately, did you get from the checking of January, 1911? A. Approximately, four hundred and forty-five. 4

Q. How many new theatres approximately did you get from the checking of July, 1911? A. Six hundred and ten.

Q. These answers are approximations? A. Yes, sir.

Q. How many new theatres did you get from the checking of December, 1911? A. Approximately, five hundred and ninety.

Q. How many new theatres did you get from the checking of January, 1912? A. Approximately, six hundred and fifty-five.

1 Q. How many new theatres did you get from the checking of July, 1913? A. Eleven hundred and thirty-six.

Q. How did the checking and investigation of October, 1910, differ from the subsequent checkings and investigations under your charge? A. In the October, 1910, checking we requested a list of theatres usually exhibiting motion pictures, and in all subsequent checkings we listed theatres as shown on our records, requesting corrections and additions necessary to bring the lists up to date.

2 Q. At the close of the checking and investigation of July 1st, 1913, did you prepare, or have prepared under your supervision and direction, a list of the motion picture theatres, licensed and unlicensed, in the United States? A. Yes, sir.

Q. Is this a correct copy of that list? A. Yes, sir.

MR. KINGSLEY: I offer it in evidence.

MR. GROSVENOR: I reserve my right of objection until I have had opportunity to cross examine the witness in order to ascertain the authenticity and correctness of this copy, and the manner in which the original was prepared.

3 The list offered in evidence is marked by the Examiner, "Defendants' Exhibit No. 144," and is as follows:

Defendants' Exhibit No. 144.

STATEMENT AS OF JULY 21, 1913, SHOWING NUMBER OF PLACES IN THE UNITED STATES IN WHICH MOTION PICTURES WERE EXHIBITED.

4 Separated as to licensees and non-licensees of the Motion Picture Patents Company.

State	Licensees	Non-Licensees	Total	Differences
Maine	80	90	170	10+
New Hampshire ..	36	40	76	4+
Vermont	33	29	62	4—
Massachusetts	169	202	371	33+
Rhode Island	24	23	47	1—
Connecticut	84	107	191	23+
New York	916	730	1646	186—
New Jersey	237	275	512	38+
Pennsylvania	650	738	1388	88+

State	Licensees	Non-Licensees	Total	Differences	
Delaware	8	19	27	11+	1
Dist. of Columbia .	40	22	62	18—	
Maryland	59	116	175	57+	
Virginia	65	86	151	21+	
West Virginia	69	101	170	32+	
Ohio	440	520	966	86+	
Indiana	238	356	594	118+	
Illinois	552	663	1215	111+	
Kentucky	94	104	198	10+	
Michigan	209	299	508	90+	2
Minnesota	134	186	320	52+	
Wisconsin	130	223	353	93+	
North Dakota	26	46	72	20+	
South Dakota	36	52	88	16+	
Iowa	186	289	475	103+	
Nebraska	106	185	291	79+	
Missouri	266	380	646	114+	
Kansas	137	258	395	121+	
North Carolina ...	55	77	132	22+	
South Carolina ...	23	36	59	13+	
Tennessee	76	65	141	11—	3
Georgia	51	94	145	43+	
Florida	47	71	118	24+	
Alabama	43	74	117	31+	
Mississippi	66	38	104	28—	
Louisiana	118	103	221	15—	
Oklahoma	92	177	269	85+	
Arkansas	63	73	136	10+	
Texas	269	338	607	69+	
New Mexico	16	20	36	4+	
Colorado	80	111	191	31+	
Wyoming	20	16	36	4—	4
Montana	71	37	108	34—	
Arizona	27	31	58	4+	
Utah	57	70	127	13+	
Nevada	19	9	28	10—	
Idaho	60	55	115	5—	
California	359	373	732	14+	
Oregon	104	127	231	23+	
Washington	127	166	293	39+	
Total	6867	8306	15173	1439+	

1 By Mr. KINGSLEY:

Q. At the conclusion of the checking of January, 1913, did you prepare or did you have prepared under your supervision and direction a list of the motion picture theatres in cities of a hundred thousand or over? A. Yes, sir.

Q. Is that a correct copy of the list you had prepared? A. Yes, sir.

Mr. KINGSLEY: I offer that list in evidence.

2 Mr. GROSVENOR: I make the same reservation as to this list.

The list offered in evidence is marked by the Examiner, "Defendants' Exhibit No. 145," and is as follows:

Defendants' Exhibit No. 145.

STATEMENT AS OF JULY 21, 1913, SHOWING NUMBER OF PLACES IN CITIES OF 100,000 AND OVER IN WHICH MOTION PICTURES WERE EXHIBITED.

3 Separated as to licensees and non-licensees of the Motion Picture Patents Company.

	City	Licensees	Non-Licensees	Total	Differences
	Boston, Mass.	20	18	38	2—
	Bridgeport, Conn. .	11	15	26	4+
	Fall River, Mass...	3	8	11	5+
	New Haven, Conn...	11	14	25	3+
	Providence, R. I....	5	4	9	1—
	Worcester, Mass. ...	4	3	7	1—
	Albany, N. Y.....	11	13	24	2+
4	Allegheny, Pa.	0	0	0	0
	Buffalo, N. Y.....	32	26	58	6—
	Jersey City, N. J... .	13	4	17	9—
	Newark, N. J.....	37	58	95	21+
	New York, N. Y....	407	259	666	148—
	Paterson, N. J.....	5	5	10	0
	Philadelphia, Pa. ..	87	122	209	35+
	Pittsburgh, Pa.	62	53	115	9—
	Rochester, N. Y....	18	25	43	7+
	Scranton, Pa.	7	20	27	13+

City	Licensees	Non-Licensees	Total	Differences	1
Syracuse, N. Y.....	23	17	40	6—	
Baltimore, Md. ...	28	68	96	40+	
Washington, D. C..	40	22	62	18—	
Chicago, Ill.	228	254	482	26+	
Cincinnati, Ohio...	42	33	75	9—	
Cleveland, Ohio	57	69	126	12+	
Columbus, Ohio	24	44	68	20+	
Dayton, Ohio.....	12	20	32	8+	
Indianapolis, Ind. ...	36	41	77	5+	
Louisville, Ky.	11	14	25	3+	
Toledo, Ohio	23	34	57	11+	2
Detroit, Mich.	52	58	110	6+	
Grand Rapids, Mich.	6	5	11	1—	
Milwaukee, Wis. ...	25	26	51	1+	
Minneapolis, Minn..	18	34	52	16+	
St. Paul, Minn.....	6	15	21	9+	
Kansas City, Mo....	38	74	112	36+	
Omaha, Nebr.	19	15	34	4—	
St. Joseph, Mo. ...	5	8	13	3+	
St. Louis, Mo.....	71	71	142	0	
Atlanta, Ga.	6	15	21	9+	3
Memphis, Tenn. ...	20	8	28	12—	
New Orleans, La. ...	48	49	97	1+	
Denver, Colo.	21	25	46	4+	
Los Angeles, Cal. ..	43	64	107	21+	
San Francisco, Cal.	46	47	93	1+	
Total	1681	1777	3458	96+	

By Mr. KINGSLEY:

Q. Miss Matthews, does the Motion Picture Patents Company keep, and has it kept since the period you have been in charge of this department, a list of the motion picture theatres? A. Yes, sir. 4

Q. Does it keep this list in a convenient form for addressing and mailing? A. Yes, sir.

Q. What is that list, how do you describe it? A. The list would be the Addressograph plates.

Q. You keep a list of Addressograph plates? A. Yes, sir,

1 according to the licensed exhibitors and according to the closed and independent theatres.

Q. You change this Addressograph list in accordance with the information received from checking? A. Yes, sir.

Q. Was the list of motion picture theatres in the United States which is in evidence and marked, "Defendants' Exhibit No. 144," accurately prepared from the information received by the checking and investigation which you have described in your testimony? A. Yes, sir.

2 Q. And was the list of motion picture theatres in cities of a hundred thousand and upward in the United States, which is in evidence and marked "Defendants' Exhibit No. 145," accurately and carefully prepared from the information which you received through the checking and investigation you have described? A. Yes, sir.

Whereupon, at 12:10 o'clock P. M., on this February 24th, 1914, the hearing was adjourned until 10:30 o'clock A. M., February 25th, 1914, to be resumed at Room 159, Manhattan Hotel, New York City.

3

4

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA, <div style="text-align: right;">Petitioner,</div>	}	No. 889.
<i>v.</i>	}	Sept. Sess., 1912.
MOTION PICTURE PATENTS Co. and others, <div style="text-align: right;">Defendants.</div>	}	

NEW YORK CITY, February 25, 1914.

The hearing set for 10:30 o'clock A. M., February 25, 1914, is adjourned until 2:30 o'clock P. M., February 25, 1914, to be held at Room 159, Manhattan Hotel, New York City.

NEW YORK CITY, February 25, 1914. 3

The hearing was resumed at 2:30 o'clock P. M., February 25, 1914, at Room 159, Hotel Manhattan, New York City.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

CHARLES F. KINGSLEY, Esq., GEORGE R. WILLIS, Esq., and FRED R. WILLIAMS, Esq., appearing for Motion Picture Patents Company, Bio-
graph Company, Jeremiah J. Kennedy, Harry
N. Marvin, Armat Moving Picture Company,
Melies Manufacturing Co. and Gaston Melies.

J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

1 HENRY MELVILLE, Esq., attorney for George Kleine,
 Essanay Film Manufacturing Company, Selig
 Polyscope, George K. Spoor and W. N. Selig.
 JAMES J. ALLEN, Esq., appearing for Vitagraph
 Company of America, and Albert E. Smith.

 Thereupon, JOHN COLLIER, recalled for further direct examination on behalf of the defendants, deposed:

Direct examination continued by Mr. KINGSLEY:

2 Q. I asked you yesterday, Mr. Collier, respecting several
 months of 1913 which were missing from the statement that
 you gave us. The statement you gave us was in regard to
 the number of licensed and unlicensed pictures that had
 been censored by the National Board of Censorship. Have
 you obtained those missing figures? A. I now have the figures
 for each month of 1913 arranged according to the several
 companies who submitted them, and also the number
 of meetings involved in the censoring.

3 Q. And was this list prepared according to your direction
 and under your supervision? A. Today. Yes, sir. According
 to my directions, under my supervision.

 Q. Is it a correct list? A. It is a correct list, to the
 best of my knowledge. It is a direct transcript of our card
 records.

 Mr. KINGSLEY: I offer it in evidence.

 Mr. GROSVENOR: I make the same objection regarding
 that list, as made respecting the testimony of this witness,
 and the exhibits introduced by him, as being immaterial and
 irrelevant.

4 The paper offered is received in evidence and marked
 "Defendants' Exhibit No. 146," and the same is as follows:

Defendants' Exhibit No. 146.

REPORT OF THE WORK OF THE CENSORING COMMITTEE OF THE NATIONAL BOARD OF CENSORSHIP OF MOTION PICTURES.

		No. of Meetings Held.	No. of Pictures.	No. of Reels.
Jan. 1913	Patents Company	16	213	221
	Universal Co.	16 }	99 }	107 }
	Other Independents	16 } 32	117 } 216	117 } 224
		<hr/> 48	<hr/> 429	<hr/> 445
Feb. 1913	Patents Company	19	229	237
	Universal Co.	16 }	116 }	124 }
	Mutual Co.	8 }	68 }	68 }
	Film Supply Co.	7 } 35	42 }	42 }
	Features	4 }	12 }	36 }
		<hr/> 54	<hr/> 467	<hr/> 507
Mar. 1913	Patents Company	18	229	237
	Universal Co.	15 }	91 }	107 }
	Mutual Co.	8 }	70 }	72 }
	Film Supply Co.	7 } 33	35 }	35 }
	Features	3 }	5 }	12 }
		<hr/> 51	<hr/> 430	<hr/> 463
Apl. 1913	Patents Company	25	271	279
	Universal Co.	18 }	152 }	168 }
	Mutual Co.	11 }	67 }	77 }
	Film Supply Co.	4 } 38	20 }	20 }
	Features	5 }	8 }	20 }
		<hr/> 63	<hr/> 518	<hr/> 564
May 1913	Patents Company	25	291	300
	Universal	30 }	147 }	163 }
	Other Independents	20 } 59	117 }	129 }
	Features	9 }	13 }	33 }
		<hr/> 84	<hr/> 568	<hr/> 625
June 1913	Patents Company	20	245	265
	Universal Co.	16 }	116 }	136 }
	Mutual	8 }	63 }	71 }
	Exclusive Co.	8 } 39	32 }	36 }
	Features	7 }	11 }	28 }
		<hr/> 59	<hr/> 467	<hr/> 536

		No. of Meetings Held.	No. of Pictures.	No. of Reels.
July 1913	Patents Company	24	219	239
	Universal Co.	18	114	134
	Mutual Co.	10	69	77
	Exclusive	10	26	30
	Features	13	22	55
		75	450	535
Aug. 1913	Patents Co.	21	283	301
	Universal	18	133	153
	Mutual Co.	8	85	100
	Exclusive Co.	8	34	64
	Features	18	26	65
		73	561	683
Sept. 1913	Patents Company	24	231	263
	Universal Co.	16	100	125
	Other Independents	16	84	96
	Features	16	31	93
		72	446	577
Oct. 1913	Patents Company	24	197	225
	Universal Co.	16	103	129
	Other Independents	16	97	111
	Features	17	34	102
		73	431	567
Nov. 1913	Patents Co.	30	269	305
	Universal Co.	20	113	141
	Other Independents	20	146	166
	Features	23	44	132
		93	572	744
Dec. 1913	Patents Company	24	182	201
	Universal Co.	16	81	102
	Other Independents	16	71	81
	Features	32	60	210
		88	394	594
Jan. 1914	Patents Company	30	256	284
	Universal Co.	20	100	125
	Other Indepen	20	95	109
	Features	35	81	283
		105	532	801

By Mr. KINGSLEY:

1

Q. In 1909, at the time of the establishment of the National Board of Censors, you were passing upon both licensed and unlicensed pictures, were you not? A. In 1909, we were passing on all licensed, and approximately three-quarters of the unlicensed. From 70 to 80 per cent. of the unlicensed film.

Q. Can you tell us in what proportions these films were submitted to you in 1909? A. Of the films that we censored, I would state to my best knowledge, but it is not based on the record—not based on our office records—that about 35 per cent. of the films were unlicensed, and the rest were licensed, but we were not at that time passing on all unlicensed films. Our records are not sufficiently clear to base more than an estimate on them for the year 1909.

2

Q. Is that your best recollection and best judgment? A. My best recollection and judgment is, that of the films we censored, between 35 and 40 per cent. were unlicensed.

Mr. GROSVENOR: No cross examination.

3

WARREN R. PALMER, a witness produced on behalf of the defendants, of lawful age, being first duly sworn by the Examiner, deposed:

Direct examination by Mr. CALDWELL:

Q. Where do you live, Mr. Palmer? A. Lester Manor, Virginia.

Q. In the year 1909, in what business were you engaged? A. In the motion picture business.

4

Q. And in what phase of the motion picture business? A. Film rental business.

Q. What was the name under which you conducted business at that time? A. Motion Picture Supply Company.

Q. And can you state about what time in the year 1909 you commenced business under that name? A. I believe it was in November.

Q. Was that a corporation at that time? A. It was, under the laws of New York.

1 Q. What position did you have with that company? A. President and Treasurer.

Q. Who else was interested with you in that business? A. Mr. R. M. Mock was General Manager and Secretary.

Q. When you first started the business, were you a licensed or unlicensed exchange? A. Unlicensed.

Q. About what time did you receive a license from the Patents Company? A. I believe in October, 1909.

Q. Did I understand you to say that you commenced in November, 1909? Commenced business in November, 1909?

2 A. We got our license in October, but we did not commence buying film until November.

Q. Now you are speaking of your business as a licensed exchange? A. As a licensed exchange.

Q. When did you commence business as an exchange, but dealing in unlicensed pictures? A. I do not recall, but I think it was—the early part of 1908.

Q. State to the best of your recollection and belief, Mr. Palmer, about when you commenced the film exchange business as an unlicensed exchange. A. It was in April, 1908, I believe.

3 Q. And you were licensed in October, 1909, by the Patents Company? A. By the Patents Company.

Mr. GROSVENOR: I object to this questioning as misleading, as it appears there were no licenses issued in April, 1908, and therefore, there was no such distinction at that time as licensed and unlicensed exchanges.

By Mr. CALDWELL:

4 Q. During the year 1908 was your exchange one of the so-called Edison licensed exchanges? A. No, it was not.

Q. Who were your competitors after you became a licensed exchange in October, 1909, and thereafter, during the year 1909, and in the year 1910? A. The Motion Picture Service Company of Syracuse; Pittsburg Calcium Light & Supply Company of Rochester, New York; Buffalo Film Exchange, Buffalo.

Q. And in what territory generally was your exchange

operating? Where were you doing business? A. Principally in western New York. 1

Q. You had customers, of course, in Rochester? A. In Rochester.

Q. In Buffalo? A. In Buffalo.

Q. And in Syracuse? A. In Syracuse.

Q. And the other towns in that section of the State? A. Yes. Albany. Northern New York towns.

Q. What were the conditions in the exchange business in that territory during that time? A. The conditions of the business were rather demoralized. The prices were very low. We had no way of controlling the credits of our various theatres that we served, and the business was not very profitable. 2

Q. Did you lose much on account of bad debts among your customers?

Mr. GROSVENOR: Objected to as leading in form.

The Witness: We did.

By Mr. CALDWELL: 3

Q. Were the exhibitors with whom you dealt, for the most part, financially responsible?

Mr. GROSVENOR: Same objection.

The Witness: No, they were not financially responsible.

By Mr. CALDWELL:

Q. Did you or did you not lose much money on account of bad debts? A. We lost a considerable amount. 4

Mr. GROSVENOR: I object to that answer as giving the opinion and conclusion of the witness, in stating "a considerable amount."

By Mr. CALDWELL:

Q. Was there much price-cutting at that time? A. A

1 great deal of price-cutting at all times. That is the way we got customers.

Q. What methods did you resort to in order to get each other's customers, if any? A. Either offer them better service for the same amount of money, or the same service for less.

Q. Did it ever happen that you, in order to get a customer away from a competitor, offered him service at a loss?

2 Mr. GROSVENOR: Objected to as leading in form and improper.

The Witness: That is a very hard question to answer, because there was no set price on the service.

By Mr. CALDWELL:

Q. But in any event, it is a fact that there was a great deal of price-cutting between those exchanges?

3 Mr. GROSVENOR: I object to that as leading in form and assuming something that the witness has not testified to.

Mr. CALDWELL: He has already testified that there was price-cutting.

The Witness: Yes, there was.

By Mr. CALDWELL:

4 Q. Well, did that price-cutting result in those exchanges doing anything as between themselves? And if so, what? A. It resulted in a working agreement amongst us not to take customers from each other except at an advanced price of ten per cent.

Q. Did it result in anything else? A. Finally, this plan did not work out to our satisfaction, and in April of 1910, we formed a trusteeship. We appointed a Trustee to receive the gross amounts received from film rental each week. We signed each other's vouchers on the Trustee to pay an amount sufficient to pay the film bills for each week, each exchange, and the residue was divided amongst us equally.

Q. How long did you continue your business after April, 1910? A. Until the General Film Company purchased the exchange. 1

Q. When was that? A. The first negotiations were entered into on June 19th.

Q. When was the sale made? A. I believe it was consummated by our giving over our stock and offices on July 1st.

Q. Did you conduct the negotiations on the part of your company? A. I did. Jointly with Mr. Mock.

Q. At what price did you sell? A. Approximately \$20,000.

Q. Payable part in stock? A. Part in preferred stock, part in cash, and part in deferred payments over a term of five years. 2

Q. Was that sale voluntary? A. It was.

Q. With whom did you conduct the negotiations on the part of the General Film Company? A. To my best recollection, with Mr. Waters and Mr. Kennedy.

Q. Did either Mr. Waters or Mr. Kennedy or anyone else make any threat to you, direct or indirect, that if you did not sell, your license might be cancelled? A. No one did.

Q. Did you know that there was a clause in your exchange license agreement permitting the Patents Company to cancel that license without cause on fourteen days' notice? A. I did. 3

Q. Did that operate on your mind in any way to induce you to make the sale? A. No, I cannot say that it did.

Q. At that time, had the General Film Company gone into business, established a branch in your territory? A. No.

Q. Or near your territory? A. Not that I know of.

Q. Well, did the fact that the General Film Company might thereafter be a strong competitor of yours have any inducement in your mind in making the sale? A. No. 4

Q. Assuming that your license had been cancelled by the Patents Company, was there enough unlicensed motion pictures available in the market to enable you to conduct your business at that time? A. I believe there was.

Q. Did you make any agreement with the General Film Company not to engage in business in future, in the film business? A. No.

- 1 Q. Did you remain in their employ after you sold out?
A. No.
- Q. Well, had your exchange, prior to the sale to the General Film Company been making or losing money? A. It had never made any money. It had always lost it.
- Q. Were you satisfied with the price which you received?
A. We were.
- Q. At that time did you regard the exchange business as a stable business? A. We always regarded it as a very hazardous business.
- 2 Cross Examination by Mr. GROSVENOR:
- Q. Mr. Palmer, the General Film Company has not paid you the entire amounts which you are to receive for your property? A. Not yet.
- Q. How much of the deferred payments remains unpaid?
A. About \$3,000, I believe.
- Q. You commenced doing a film rental business in 1908?
A. 1908.
- Q. Who were the owners of the business? A. It was a copartnership owned by Mr. R. M. Mock and myself.
- 3 Q. How much did you put into it? A. We started with no capital. We rented film from various exchanges in New York, and sub-rented it in the western New York territory.
- Q. Then, as you gradually expanded and got a little more money, you expanded some more? A. That is the idea.
- Q. And gradually built up the business? A. Built up a business very gradually, and finally did put in some real capital.
- Q. How much did you put in? A. About a thousand dollars.
- 4 Q. In July, 1910, you had been doing business about two years? A. About two years.
- Q. And in that two years, this business which you have described as an unprofitable business, had grown from nothing, to be of a value of \$20,000, is that right? A. It had, yes.
- Q. Have you made many ventures in the business world that have been equally successful in two years? A. This business venture was not successful.

Q. You got \$20,000 for selling out, didn't you? A. There was a difference between the copartnership and the incorporation. We started the copartnership and finally did business by an incorporation, a company. 1

Q. How much money did you put into the corporation? I am talking about this business of two years now. A. In the corporation? About \$8,000.

Q. You put in? A. Put in.

Q. And had you made that in your business as a film rental exchange? A. No.

Q. Then you had invested \$8,000 and got back \$20,000, is that right? A. No, that is not right. We owed a great deal of money. 2

Q. Then how much had been put in? A. I presume—

Q. I am not asking you what you presume. I am asking you what you know. Now, how much money had been paid in? A. Approximately about twenty-two thousands of dollars.

Q. Who owned the stock of this motion picture company? A. Myself, Mr. R. M. Mock, Charles H. Palmer, Mr. Ford, of Ford, Etis & Woolecott, a brokerage concern, Mr. F. F. Armstrong and one or two others that I cannot recall. 3

Q. Who was the largest owner of the stock? A. I was.

Q. How much did you own? A. 49 shares.

Q. How many shares were there in all? A. There were one hundred and fifty.

Q. Who were the other large owners? A. Mr. Mock, who owned 40 shares.

Q. How much did you put in for your 49 shares? A. I put in what good will we had, and \$900, office furniture.

Q. \$900 of office furniture? A. No; \$900 in cash.

Q. How much did Mock put in? A. Mr. Mock put in no actual cash. He put in what part of the copartnership he owned, which was half. 4

Q. And how much cash did these other men put in? A. They paid for their stock at a hundred cents on the dollar.

Q. How much cash did they put in? A. Mr. Charles H. Palmer put in a thousand dollars; Ford, Etis & Woolecott put in \$600; Mr. James H. Palmer, I believe, put in a hundred dollars, one share; Mr. F. F. Armstrong put in \$3,000. A man by the name of George Simpson put in a

1 hundred dollars; a man by the name of Blumensteil put in \$500.

Q. And that was all the cash that was put into the business? A. As well as I remember now.

Q. How did you happen to go down to see Kennedy and Waters? A. Because I wanted a license from the Motion Picture Patents Company.

2 Q. Well, I may not have made my question clear. How did you happen to go down and see Kennedy and Waters about selling out your business to the General Film Company? A. Mr. Waters called Mr. Mock up over the long distance telephone on June 19th, and asked us if we could be down to New York the next day, and we subsequently went down the next day.

Q. Did Waters ask you to come to New York? A. Yes.

Q. Did he say why? A. I did not answer the 'phone. I don't remember whether Mock told me or not.

Q. What was the purpose of your going to New York on June 20th? A. We knew, or thought we knew, what the purpose was. That the General Film Company would purchase our exchange.

3 Q. And that was the first time, that is, when Waters called up on June 19th, that the subject had been broached between you and the General Film Company? A. Yes.

Q. You knew the General Film Company was owned by the various licensed manufacturers, did you not? A. Yes.

Q. And you knew that it contemplated going into the rental business on a large scale? A. Yes.

Q. And you knew that it had purchased some exchanges in New York at that time? A. No, I did not know that.

Q. Well, you knew that it had entered upon business? A. Yes.

4 Q. Did you also know that the Patents Company had cancelled various licenses in the Summer of 1910? A. I knew that they had cancelled one license.

Q. And whose license was that? A. I believe it was the Actograph Company.

Q. What is your business today? A. I am not occupied.

Q. Where do you live? A. Lester Manor, Virginia.

Redirect examination by Mr. CALDWELL:

Q. Now, Mr. Palmer, referring to these deferred payments, have they been made promptly as they became due?
A. Always. 1

Q. There is no payment that is overdue at the present time? A. None.

Q. Are you still interested in those deferred payments, or have you sold out your interest? A. No, I have an equity.

Q. The dividends on the preferred stock, have they been met promptly and paid? A. Yes, always.

Q. Well, you may state whether that business was profitable or unprofitable up to 1909. A. It was profitable. 2

Q. During the year 1909, until you became a licensed exchange, was your business growing? Were the profits continually growing up to that time? A. No.

Mr. GROSVENOR: I object to that as leading.

Recross examination by Mr. GROSVENOR:

Q. Whom did you see when you came down to New York on June 20th? A. I believe, Mr. Kennedy and Mr. Waters. I also remember Mr. Marvin was there. 3

Q. That is in connection with the sale of your property?
A. Yes.

Q. And did those three gentlemen all discuss with you the question of making the sale? A. No, I believe only Mr. Kennedy and Mr. Waters.

Q. Was Mr. Marvin present at the time? A. To the best of my recollection he was.

Q. What was said to you? What did you say on the subject of selling your property? A. They asked us if we are ready to sell our exchange. We replied we were. They made us the offer, and we asked a few minutes to think it over. We came back and told them we wanted a thousand dollars more. They said the price that they had already offered us was the limit, and so we accepted. 4

Q. What is the name of this man Blumenstiel? What is

1 his full name? A. I think his initials are A. M. Blumenstiel.

Q. Where does he live? A. In Rochester.

Q. What is the name of Mr. Simpson? A. George E. Simpson.

Q. Where does he live? A. Rochester.

Redirect examination by Mr. CALDWELL:

Q. Were you satisfied with the price that you got for your exchange?

2
Mr. GROSVENOR: I object to that as immaterial, and having no bearing on the issues, and also irrelevant and incompetent.

The Witness: We were.

By Mr. CALDWELL:

Q. You may state whether or not some time prior to the sale, you had wanted to sell your exchange.

3
Mr. GROSVENOR: I object to that for the same reason.

The Witness: We did want to sell our exchange.

By Mr. CALDWELL:

Q. Did you or did you not welcome the opportunity that the General Film Company afforded you to purchase your exchange?

4
Mr. GROSVENOR: Same objection.

The Witness: We did.

Thereupon, THEODORE W. WILLIAMS, a witness produced on behalf of the defendants, of lawful age, being first duly sworn by the Examiner, deposed:

Direct examination by Mr. CALDWELL:

Q. Where do you live, Mr. Williams? A. Philadelphia at present.

Q. In what business are you engaged? A. I am acting as Manager for the General Film Company's Feature Department.

Q. How long have you been with the General Film Company? A. About two years now.

Q. In February, 1913, what was your position with the General Film Company? A. Solicitor.

Q. Connected with what office? A. No one in particular. I traveled during that time from the State of Jersey, through to Massachusetts, Connecticut. Used to make trips all over.

Q. Then your duties required you to work in that particular territory? It was not general throughout the country, and you were not directly connected with the general office? A. I worked out of the general office, but where I was used to do business with the exchange, when I was in that territory. Whatever exchange it was.

Q. Mr. Williams, I will read you from the redirect examination of Louis Rosenbluh, a witness called by the petitioner in this case, pages 731 and 732:

"Q. You answered on cross examination, I think, by Mr. Caldwell, that recently you lost some more customers, but as rumors died away, you hoped to get some of them back. What did you mean by that? What was the cause of this recent loss of a few customers? A. I have been approached two weeks ago by the exhibitors doing business with us, with cards in their hands of the General Film Company. One of the cards had the name of Worthington on as a representative. Another had Williams on as representative. These men were very active and I have heard from them in various parts of the city.

"Q. Was this after the recent cancellation of your license? A. Prior to that cancellation. In fact, they had the information going around that we were in trouble again.

1 That this time it was positive, and authentic, that after a certain period, which was within two weeks, the Greater New York Film Company would no longer receive any films, and that they had better make their arrangements immediately; in fact, very nice inducements were offered them to accept at once, and not to wait until such time as the films would no longer be supplied by the licensed manufacturers. In fact, I heard it from the Bronx, Brooklyn, Jersey, and all over. Every one of my customers pretty much was visited, and they all came and asked what truth there was to that statement. And a great many of them turned, and did not wait long enough to see what the result would be. In fact, one of the companies in Newark, Meyer & Singer, left the General Film Company a few weeks ago and made arrangements with us. When they were about to leave the General Film Company, they were told that they would not fare well by making that change. That certain early runs would be placed with the exhibitors who were competing with them, and that they would stand no chance at all. These are the very first ones who were approached."

2
3 Now, did you, about that time, which was within two weeks of February 27th, 1913, see and solicit the business of any of the customers of the Greater New York Film Rental Company? A. Well, as to the exact time, within two weeks, I cannot say, but during that period of 1913, the early part, say February, yes, I did.

Q. Are you the only Williams connected with the General Film Company at that time as a solicitor? A. Yes, sir.

Q. So, if a card of the General Film Company, with the name of Williams on it as a representative, was found in the hands of any exhibitor at that time, you are the Williams referred to, are you? A. Yes, sir.

4 Q. Now, did you state to any of the customers of the Greater New York Film Rental Company that they were in trouble again, or words to that effect? A. No.

Q. Or that the information was positive, authentic, that after a certain time, the Greater New York Film Rental Company would no longer receive any films? A. No.

Q. Or words to that effect? A. No, sir.

Q. Or that the customers had better make their arrangements immediately? A. Not following that up.

Q. What do you mean by "not following that up"? Do

you mean you do not understand the question? A. I understand you asked me if I had told any exhibitor that was getting service from the Greater New York that they had better get it from the General Film Company. Is that the idea? 1

Q. As the Greater New York Film Rental Company would no longer receive any films? A. Yes, I understand you. No, I never did.

Q. Did you tell any of them not to wait until such time as the films would no longer be supplied by the licensed manufacturers to the Greater New York Film Rental Company? A. No. 2

Q. In point of fact, did you at any time visit any great number of customers of the Greater New York Film Rental Company? A. Well, not in particular. As I went through different territories, I would stop and see exhibitors. Even if we were serving them, I would drop in and say, "Hello, how are things."

Q. Do you remember getting the business in Newark of Meyer & Singer? A. Yes.

Q. What did Meyer & Singer say to you in reference to the service that they were getting from the Greater New York Film Rental Company, if anything? A. Their houses were scattered, as near as I can recollect, I think from Bayonne, Newark and Roselle, and I figured it would be better if they did get their service from the General Film Company from the same office as their opposition, so that we could divide the service, and they would not conflict. You see, if one theatre got it from the General Film Company and the other from the Greater New York, the two different offices might both give the same theatres the same picture on the same day. 3

Q. Answering my question now, did these gentlemen, or either of them, make any statement to you as to the character of the service that they were getting from the Greater New York Film Rental Company? Did they say whether they were satisfied or not? 4

Mr. GROSVENOR: Objected to as leading.

The Witness: Why, yes, they were eager to get with us.

1 MR. GROSVENOR: I also move to strike out the answer as not responsive to the question.

By Mr. CALDWELL:

Q. Do you remember when Meyer & Singer left the General Film Company, discontinued their service, following that? A. No, I do not.

Q. Did you tell them that they would not fare well if they took service from the Greater New York Film Rental Company? A. No, sir.

2 Q. At this time had you been informed by the Patents Company or anyone connected with the Patents Company that the license of the Greater New York Film Rental Company was going to be cancelled? A. No, sir.

Q. Had any official of the Patents Company, or anyone else, informed you that the supply of the Greater New York Film Rental Company would be cut off after two weeks? A. No, sir.

Q. Did you know anything about it? A. No.

3 Cross examination by Mr. GROSVENOR:

Q. Mr. Williams, in answer to that last question, "Did you know anything about it," and you answered, "No, sir," what were you referring to? A. I thought he asked me if I had received any notification from any of the officials of the company or from the Motion Picture Patents Company, that they were going to discontinue giving them film. Is that your question?

Mr. CALDWELL: That is right.

4 The Witness: We never got any notification to that effect.

By Mr. GROSVENOR:

Q. What were your duties as solicitor? A. Go out and procure new business.

Q. And new business was to be procured from those who were not already your customers? A. It might be an in-

dependent man, or he might be getting service from the Greater New York, Mutual or Universal. 1

Q. New business was to be obtained from those who were not at the time taking service from you, isn't that right?

A. Also new theatres being built.

Q. It was to be obtained, that is, the new service or custom was to be gotten from those theatres who were not at the time taking service from you? A. That is the idea.

Q. Was there anyone at that time in your territory supplying licensed films to theatres, except the Greater New York Film Rental Company, other than yourselves? A. In the early part of 1913 there was. 2

Q. Who was there? A. The Kinetograph Company.

Q. How long were they in business? A. Very short. I should imagine—I am not positive—about seven or eight weeks, probably.

Q. Can you think of anyone else that was distributing the so-called licensed film to the theatres, other than the Greater New York Film Rental Company and yourselves? A. During that period?

Q. Yes, than this Kinetograph Company. A. No, I could not. 3

Q. You knew that prior to this period there had been other companies dealing in licensed film beside the Greater New York Film Company and yourselves, in New York?

A. There was, before the General Film Company was formed.

Q. How long have you been in this business? A. About six years.

Q. How long have you been with the General? A. Pretty near two. I was with one of the companies that they bought up.

Q. Which company was that? A. The Actograph Company. 4

Q. And where was that located? A. Seventeenth Street and Fourth Avenue.

Q. Were you one of the owners of the Actograph? A. No.

Q. You knew that the Greater New York Film Rental Company had its license cancelled once, didn't you, in February, 1913; that is, in February, 1913, you knew that the Greater New York Film Rental Company had once had its license cancelled, and that much litigation had resulted?

1 A. Well, the only knowledge I had of it was from newspapers.

Q. Well, you knew it from newspapers, didn't you?

A. Yes.

Q. You read the trade papers, and you followed the progress of the litigation as far as you could from the trade papers, didn't you? A. Yes, I saw—I would never make any attempt—I never did—in fact, I am very much what you might call a poor reader. I don't read much. And things like that would possibly be shown to you by exhibitors or one thing or another.

2 Q. And they were shown to you, weren't they? A. Yes.

Q. So that you had occasion to know of these facts?

A. Yes.

Q. And these are the things that were talked about when you went around to see the exhibitors? A. Yes. During the course of conversation, that would come up sometimes.

Q. Whom did you take your orders from in February, 1913? A. As to what.

Q. Who was your superior? A. Mr. Boushey.

Q. Where was he located? A. No. 200 Fifth Avenue.

3 Q. What was his title? A. I don't believe he had a title. He was acting in the capacity of General Manager, but he did not have the title.

Q. Who had preceded him as General Manager? A. P. L. Waters.

Q. And Boushey acted as chief in the interim while they were getting another manager? A. Well, he was acting in the capacity of General Manager, but I never knew him to have the title. I don't believe he ever signed his name as General Manager.

4

CHARLES L. WORTHINGTON, a witness produced on behalf of the defendants, of lawful age, being first duly sworn by the Examiner, deposed:

Direct examination by Mr. CALDWELL:

Q. Where do you live, Mr. Worthington? A. New York.

Q. And in what business are you engaged? A. Manager of the Special Feature Department, General Film Company.

Q. In what business were you engaged in the month of February, 1913? A. Commencing the week of February 10th, I was engaged by the General Film Company. 1

Q. When did you first enter their employ? A. On the 11th. I started work on the 11th. I was engaged on the 10th.

Q. You have heard the testimony that I have just read, the questions and answers from the redirect examination of Mr. Rosenbluh, have you? A. Yes, sir.

Q. So that it will not be necessary for me to read that to you again. Now, did you at any time preceding say the 14th of February, leave any of your General Film Company cards, bearing your name, with any of the customers of the Greater New York Film Rental Company? A. No, sir. 2

Q. When did you have your cards made? A. Either the 13th or 14th. On the 11th—on the afternoon of the 11th they asked whether we had cards. I told them I did not have any, and they advised us to have some printed. I had them printed on the 12th, but don't believe that I got them before the 13th.

Q. Were you the only Worthington connected with the General Film Company at that time in New York? A. Yes, sir. 3

Q. Did you solicit the business of any of the customers of the Greater New York Film Rental Company about that time? A. No, sir.

Q. Did you say to any exhibitors that the Greater New York Film Rental Company was in trouble again? A. No, sir.

Q. Or that the Greater New York Film Rental Company would no longer receive any films? A. No, sir.

Q. Or that they had better make arrangements immediately with the General Film Company for a supply? A. No, sir. 4

Q. And not wait until such time as the films would no longer be supplied by the licensed manufacturers? A. No, sir.

Q. State what, if any, instructions you received from the General Film Company when you started out? A. Keep away from the houses using Greater New York service.

Q. Did they tell you not to solicit the business of the

- 1 Greater New York Film Rental Company customers? A. Yes, sir, they did.

Q. Did you at any time, directly or indirectly, convey to any customers whose business you solicited, that the Greater New York Film Rental Company might lose its license? A. No, sir.

Q. At that time did you know what an exchange license was? A. I did not.

Q. Had you ever been in the film rental business before that time? A. Not before February 10th, no, sir.

- 2 Cross examination by Mr. GROSVENOR:

Q. How did you know who the customers of the Greater New York Film Rental Company were? A. You could not see until you got inside, and they told you that. There was no way to tell whether they were using the General Film stuff or whether they were getting their service from the Greater New York.

Q. Then you may have at least approached the theatres or owners of the theatres— A. Yes, sir.

- 3 Q. Who were customers of the Greater New York Film Rental Company? A. Yes, sir.

Q. And you may have left a card with such customers? A. After the 13th or 14th. Not previous to that.

Q. Your business was to become acquainted with the theatre owners and establish friendly relations with all of them in your territory? A. Yes, sir.

Q. Who was it that told you not to go near the customers of the Greater New York Film Rental Company? A. Mr. Willis was one, Mr. Etris was another, and Mr. Kane.

Q. Who is Mr. Willis? A. Mr. Willis was at that time General Representative of the General Film Company.

- 4 Q. Located where? A. Well, he was in New York at that time. His headquarters were in Cleveland. Mr. Etris was one of the Managers of the 23rd Street branch, and Mr. Kane was the other Manager.

Q. What did they tell you to do? A. They said to keep away from them, as soon as we got in and found they were getting service from the Greater New York Film Rental Company, not to solicit their business.

Q. Just to get out? A. Get out.

Q. And leave your card? A. Did not say anything about

leaving a card at all. Naturally, going in to talk to a man, 1
you would leave the card. I used to go in and ask them
where they were getting service. If they said they were
getting from the Greater New York, I would not have any-
thing more to say to them. Not in the way of business, at
least.

Q. Just exchanged gossip? A. No. I would more than
likely talk to them about how their business was, and what
the prospects were. But not in the way of soliciting busi-
ness whatever.

Q. Did they ever mention this subject of the cancellation 2
of the Greater New York license, and the pending litiga-
tion between the Greater New York and the General Film
Company? A. I don't remember of them doing so, no, sir.

Q. Had you been in the film business before February,
1913? A. No, sir.

Q. What had been your line of business? A. Aviation.
Not flying, myself, but in the business end of it.

Q. And you talked aviation with the theatre people, I
suppose? A. Well, no, I don't believe I did. That hardly
would interest them.

Q. Are you with the General Film Company today? A. 3
Yes, sir.

Whereupon, at 4 o'clock P. M., on this Wednesday,
the 25th of February, 1914, the hearings are adjourned until
Monday, March 9th, 1914, at 10:30 o'clock A. M., at Room
159, Hotel Manhattan, New York City.

1

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center; flex-grow: 1;"> UNITED STATES OF AMERICA, Petitioner, <i>v.</i> MOTION PICTURE PATENTS Co. and others. Defendants. </div> <div style="font-size: 4em; line-height: 1; margin-left: 10px;"> { </div> </div>	No. 889. Sept. Sess., 1912.
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2

NEW YORK CITY, March 9, 1914.

The hearings were resumed pursuant to adjournment at 10:30 o'clock A. M., March 9, 1914, at Room 159, Manhattan Hotel, New York City.

3

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

CHARLES F. KINGSLEY, Esq., GEORGE R. WILLIS, Esq., and FRED R. WILLIAMS, Esq., appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin, Armat Moving Picture Company, Melies Manufacturing Co. and Gaston Melies.

4

J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

HENRY MELVILLE, Esq., attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

JAMES J. ALLEN, Esq., appearing for Vitagraph Company of America, and Albert E. Smith.

Thereupon, PERCIVAL L. WATERS, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Waters? A. Hotel Wolcott, New York.

Q. How long have you been a resident of New York? A. About eighteen years.

Q. What business were you engaged in in 1909? A. Moving picture business; distributing films.

Q. And by that do you mean that you owned a rental exchange? A. Yes, sir.

Q. How long had you been the owner of a rental exchange in 1909? A. About fifteen years.

Q. Mr. Waters, did you sell your rental exchange to the General Film Company? A. Yes, sir.

Q. At what time was it that you sold your stock and films to the General Film Company? A. It was in 1910.

Q. At what time in 1910? A. Why, the arrangements were made, I think, in about April or May.

Q. With whom did you deal when you entered into the contract for the sale of your stock and films to the General Film Company? A. J. J. Kennedy.

Q. Did you conduct the negotiations entirely with him? A. No, I closed with Mr. Kennedy and Mr. Berst, representing the General Film Company.

Q. How did the negotiations begin between you and Mr. Kennedy? A. Someone called me on the 'phone, and asked me if I would see Mr. Kennedy at the General Film Company's office on a certain day, and I told them "Yes," and I went to the office and met Mr. Kennedy and Mr. Berst, too, I think, was present.

Q. At the time that you called upon Mr. Kennedy was there any discussion respecting the possibility of the sale of your stock and films to the General Film Company? A. Any discussion?

Q. Yes. A. No discussion.

Q. Was any offer made to you at that time? A. Yes, sir.

Q. Did you subsequently accept the offer that was made to you? A. Yes.

1 Q. Were you satisfied with the amount paid you? A. Perfectly.

Q. Was it a fair price for your stock and films that you sold? A. Yes.

Q. Did the contract provide for payments of part cash and part deferred cash payments, and part stock? A. Part deferred payments and part stock.

Q. Were the payments made to you as they came due? A. Yes, sir.

Q. Was the stock delivered to you according to contract? A. Yes.

2 Q. Have you had any difficulty with the General Film Company since the time of the sale with respect to the payments, or with respect to the delivery of the stock? A. No.

Q. Have the dividends upon the stock been paid from time to time as they were declared? A. Yes, sir.

Q. After the sale of your stock and your supply of motion pictures to the General Film Company did you remain with the business for some time? A. I did.

Q. Did you subsequently become manager of the General Film Company? A. The General Manager.

3 Q. At what time was it that you became the General Manager of the General Film Company? A. I think in June, 1910.

Q. After you became manager of the General Film Company in June, 1910, did you have supervision and charge of its business in Greater New York and in the territory adjoining New York? A. Yes, sir.

Q. Were you conversant with the competition then existing between the General Film Company and the Greater New York Film Rental Company? A. Yes, sir.

4 Q. Did you or did any of your subordinates with your consent instruct your representatives in the field to make any effort to get business away from the Greater New York Film Rental Company? A. No.

Q. What were your directions and instructions to your subordinates with reference to the existing business which the Greater New York Film Rental Company then had? A. To keep away from it.

Q. Did you at any time direct or consent to or permit any discrimination against customers of the Greater New York Film Rental Company? A. No.

Q. If at any time a customer of the Greater New York Film Rental Company came to you for service was there any discrimination against him because of the fact that he had been served by the Greater New York Film Rental Company?

A. No.

Q. Or for any other reason? A. No.

Q. Did you from time to time have customers leave you and go to the Greater New York Film Rental Company who subsequently came back to the General Film Company for service? A. Yes.

Q. Was any discrimination shown against those customers who had left you and gone to the Greater New York Film Rental Company, and then came back to the General Film Company? A. No.

Q. Do you know of any instance where the Motion Picture Patents Company discriminated in regard to customers in favor of the General Film Company? A. No.

Q. If at any time a customer of the General Film Company wished to go to the Greater New York Film Rental Company, was anything done to prevent his going? A. No.

Q. Did the General Film Company ever refuse to serve customers of the Greater New York Film Rental Company who came to it for service? A. No.

Q. In dealing with the Greater New York Film Rental Company, and in carrying on the competition then existing in the New York field, did you do anything, or assist any one in any way to prepare or draft plans to drive the Greater New York Film Rental Company out of business? A. No.

Q. Did you, in the early part of September, 1911, call up William Fox, the President of the Greater New York Film Rental Company, and ask him to call upon you at your place of business? A. Yes.

Q. Will you tell us the circumstances of that conversation, how it began, and how it was that Mr. Fox finally called upon you at your place of business? A. I telephoned Mr. Fox relative to a certain amount of money that I considered I owed the Greater New York Film Rental Company, and told him that I had taken the matter up with Mr. Rosenbluh, and after I asked him if he knew of the circumstances and conditions, I asked him if the check should be made to him or to the Greater New York Film Rental Company; and he remarked about not having heard

1 from me in some time, and I asked him if he would not stop in the office some time and pay me a visit.

Q. Was this conversation in reference to this unadjusted account entirely, at that time? A. Entirely.

Q. Did he subsequently call at your office, in or about September, 1911? A. Yes.

Q. And was this call that he made in connection with this prior conversation respecting the unadjusted account? A. In a measure.

2 Q. At the time he called upon you at your office, in September, 1911, did you say to him on that occasion, either in terms or in substance: "Fox, I have sent for you, and my object in sending for you is to tell you that in my opinion this would be the very best time to sell your plant to the General Film Company, as you are no doubt aware that we have all of the business now"? A. No.

Q. Did you make any such remark to him? A. No.

Q. Had you sent for him for the purpose of telling him that? A. No.

3 Q. Did you say to him on that occasion, either in words or in substance: "Fox, you know that I have always been friendly to you, and I am willing to give you my best advice, and then you can do as you think best. You know, you have stayed in business a good long time. Everybody else is out, and you are still in, and if I were you, at this time I would sell out and be done with it"? A. No.

Q. Did you give him any advice to the effect that he should sell his business? A. No.

Q. Did you tell him that he had been in business for a good long time and that everybody else was out? A. No.

Q. Did you tell him that if you were in his position at that time that you would sell out and be done with it?

4 A. No.

Q. Did you say to him on that occasion, either in words or in substance: "Fox, now, if you don't offer your plant today, you might not get another chance. Now, if I were you—that is all I can say to you. I am not going to talk any plainer. You can understand what I mean. Now, don't press me, and don't walk out and later say that I did not try to treat you fair. I cannot talk any plainer than I am to you now. I would advise you to sell, and I

don't mind telling you if you don't sell now, you shall not have another chance to sell"? A. No. 1

Q. Had you any reason to tell him he should sell his plant? A. No.

Q. Had you any reason or authority to tell him that if he did not sell his plant, he would not have another chance? A. No.

Q. Did Fox say to you on that occasion, either in terms or in substance: "Now, Waters, let us see just what you mean by that. Am I to infer that if I do not sell my business to the General Film Company, that you are going to cancel my license, and that I am going to be put out of business as you have done to a great many others?" A. No. 3

Q. And did you then reply: "All I can tell you is that you ought to sell"? A. No.

Q. On the occasion of this alleged conversation between Fox and you, regarding which he has testified in this case, did he say to you, either in terms or in substance: "Now, look here, Waters, if you pretend you have got all of this friendship for me, I think I do understand what you are driving at, and I think I am beginning to see it as you are putting it. Now, I don't want to be driven out of my business, and I don't want to lose my business, but if I have got to sell, and you say I have got no alternative at all, I suppose I have got to sell. That is all"? A. No. 2

Q. Did he make any such statement to you at all? A. No.

Q. Did he say to you that if he had got to sell, he would sell? A. No.

Q. And did you then say to him, either in terms or in substance: "Now, son, you are getting some sense"? A. No.

Q. Did you ever address him as "son"? A. No. 4

Q. Either at that time or at any other time? A. No.

Q. On the occasion that Fox called upon you at your office, in September, 1911, did he say to you in the course of the conversation, either in terms or in substance: "I have been informed by other people whose plants you have purchased, about what you are paying, and in my opinion they are ridiculously low figures for a plant—for the money that some of them are earning. Now, I would not want to let go at all, even under this pressure, without I got at least \$150,000?" A. He made some reference to \$150,000, but as to the rest of it, no.

1 Q. Mr. Waters, will you tell us what was said on the occasion that Fox called upon you at your office, with reference to the possibility of his selling his plant? A. I don't know that Mr. Fox called at the office in reference to selling his plant.

Q. I didn't mean that he called there to sell it, but I mean to ask you what he said with reference to selling it? A. The conversation opened about the money I had telephoned about, and he afterwards looked the
 2 offices over and remarked about them and wanted to know how the thing was getting along, and I told him pretty well, and he wanted to know if it was not possible for some working arrangement to be made between the General Film Company and the Greater New York Film Rental Company, and I asked him what he meant by "working arrangement," and he said he meant for the Greater New York Film Rental Company to keep away from our customers and that we were to keep away from the Greater New York Film Rental Company's, and I told him such an arrangement was not possible as far as I was concerned. Then
 3 he asked me if I knew why it was that the General Film Company had never approached him on the subject of purchasing his exchange, and I told him that that was something that I didn't have anything to do with, and knew nothing about it, and he said that he thought that he had figured the matter out. I asked him how he had figured it, and he said that he thought the General Film Company wanted at least one exchange to remain intact so that it would not have the appearance of being a trust, and thought that it would work out for the Government's benefit, and I told him I knew nothing about that, and he said, "Do you suppose they will ultimately make me an offer?" And I
 4 said, "I can only say what I said before—I know nothing about those things. I am the General Manager of the Company, and my duties only begin after the exchanges are acquired." And he went on to ask if I thought they would make him an offer, and I told him I saw no reason why they should not, and I asked him if he wanted to figure on the sale of his exchange, and he said, "Yes," that he would like to take the matter up; and I told him if he was serious I would see if I could locate Mr. Kennedy, as he was the man who handled the matter, and he said he was serious, and I said:

"Before I call Mr. Kennedy up I would like to know if you are the owner of the exchange, as I do not want to waste Mr. Kennedy's time or yours." And he said: "Why do you ask me that?" I said: "It is rumored around the city generally that you are not the owner of the Greater New York Film Rental Company, but that there are other interests." And he said there were other interests, but "I can control those; I am in a position to say 'yes' or 'no' to any offer that is made." I called Mr. Kennedy on the 'phone, and told him Fox was there, and this conversation was in Mr. Fox's presence—I told him that he wanted to talk to him about selling the Greater New York Film Rental Exchange, and he (Kennedy) said, "All right, I am coming uptown, and I will stop in there; I will be up right away." He came up, and he and Mr. Fox discussed the sale of the exchange. I was in the office, but was in the room with them only a part of the time. I didn't hear all of the details.

Q. At the time and during this conversation with him did you give him to understand or seek to give him to understand that you had information to the effect that his license would be cancelled if he did not sell out to the General Film Company? A. No.

Q. Did you in fact have any knowledge or information whatever at that time that would have warranted such a statement? A. No.

Q. Did you on the occasion of this interview with William Fox regarding which you have just testified say to him in terms or in substance: "Now, you are all right; you are travelling in the right road there; you are a little bit off on the figures, but as long as you realize it today, and now is the time, why, on the question of price, I will call in the big chief. That is Mr. J. J. Kennedy. You know that he is an officer in the General Film Company, he is an officer in the Motion Picture Patents Company, he is an officer in the Biograph Company, he is a leading spirit in this entire thing, and this is a part of his brain, this is his child, as he calls it, and I will let him talk to you and see how much he wants to pay for it"? A. No.

Q. Did you speak of Mr. J. J. Kennedy as the "big chief"? A. No.

Q. At that time? A. At no time.

Q. Was anything said about any "big chief" at that interview? A. Yes.

1 Q. Who was the "big chief" referred to? A. T. D. Sullivan who, I think, was represented to be interested in the exchange, and Mr. Fox referred to him as being the "big chief" throughout the conversation.

Q. So that the characterization "big chief" which was used at that conversation was used by Mr. Fox and not by you? A. Yes, by Mr. Fox.

Q. Before you called up Mr. Kennedy did Mr. Fox say anything to you at all about the price of his exchange? A. Yes, sir.

2 Q. What did he say? A. He said his exchange was a very valuable one and that he considered it worth a lot of money. He wanted to know if I thought it would be possible for him to make a price on the exchange, and I told him I had no advice to give, and knew nothing about it. He says, "Well, I would like to tell you in confidence what the price is, but it is distinctly understood you are not to mention this to Mr. Kennedy," and I said, "All right." He said he held the exchange at at least one hundred and fifty thousand dollars.

Q. Did you know at that time whether Mr. Fox and Mr. Kennedy were acquainted? A. Yes.

3 Q. They were already acquainted? A. Yes, sir.

Q. Did you enumerate the various offices Mr. Kennedy held in the different companies when talking to Mr. Fox on that occasion? A. No.

Q. Did you find it necessary to go into a lengthy statement to identify Mr. Kennedy? A. No.

Q. When Fox met Kennedy were you present? A. Yes, sir.

Q. Did you find it necessary to introduce them to each other? A. No.

4 Q. When you went with Mr. Fox to Mr. Kennedy's office after the conversation you have just described, did you on that occasion say to Mr. Kennedy, either in words or in substance: "I had quite a talk with Mr. Fox, and I think he understands his position pretty well"? A. No.

Q. Did you see Fox again after the conversation between him and Mr. Kennedy and at which you were not present? A. Yes, sir.

Q. Did you see him immediately after their conversation? A. Yes.

Q. Did you, shortly after the conversation between Mr.

Fox and Mr. Kennedy, say to Fox, either in words or in substance: "Fox, I think you are foolish. I thought you had some sense before I called the big chief in, but I see it all went to pieces again"? A. No. 1

Q. Did you say to him on that occasion after his conversation with Mr. Kennedy, either in terms or in substance: "Why, Fox, look here, don't you know that if I could get any assurance that the Motion Picture Patents Company would not cancel my license, the license of the Kinetograph Company, that I had, why I would pay them all the money they gave me and twice as much as that. That would be a cinch the way this business is now. If I was in the field renting films, do you suppose I would have to be here and be an employe of these people? But I seen it coming. I knew the time was going to come when we had to get out and I got out, that is all. Now, use a little sense?" A. No. Furthermore, the Kinetograph Company had no license. 2

Q. The Kinetograph Company had no license, you say? A. No.

Q. Did you say to Mr. Fox on that occasion, either in words or in substance: "I am running this concern here now. I am the General Manager of the General Film Company, and when we meet in competition or in some other way, we are a great, big, gigantic wheel, and you are a little splinter. Every time we meet you, we have got to run over you and crush you, and get you out of the way, because you are a stumbling block. We hear about this every day of our life here. A customer walks into our office and complains we are charging too much money for the service we are giving him. We say 'that is the best we can do.' Now, the next morning, we find out he is a customer of yours. If he was not a customer of yours, he would not be a customer of anyone else. We can charge him as we like and do as we like. Now, you understand we must get you out of the way. You are the last one. We must have thought a lot of you to leave you the last fellow. Now be sane. Eighty-nine or ninety thousand; I think I can fix it for you and get you a hundred"? A. No. 3 4

Q. Did you say to Fox on that occasion: "We are a great, big, gigantic wheel and you are a little splinter"? A. No.

Q. Did you then mix your metaphors and tell him he was a stumbling block? A. No.

1 Q. Did you promise him to endeavor to arrange so he would get a hundred thousand dollars for his exchange? A. Mr. Fox said that he didn't understand why Mr. Kennedy would let a few thousand dollars stand in the way of the deal. He says, "I would accept a hundred thousand dollars for the exchange." I told him as well as I knew Mr. Kennedy I took it for granted he would not trade, but if he wanted me to mention a hundred thousand dollars to Mr. Kennedy I would.

2 Q. Did he say to you on that occasion either in terms or in substance: "Just see that they don't cancel my license and job me if you are my friend and everything will be all right"? A. No.

Q. Was anything said at that time about his being jobbed, or the possibility of his being jobbed? A. Not to me.

Q. Was anything said in your presence by anybody as to the possibility of his being jobbed? A. No, sir.

Q. Do you recall having an interview with one Louis Rosenbluh in September, 1911? A. Yes, sir.

Q. Where did the interview take place? A. Two hundred Fifth Avenue.

3 Q. Did he seek the interview, or you seek it? A. I telephoned Mr. Rosenbluh relative to the adjustment of the account heretofore referred to, and invited him to stop in the office if he should happen to be in the neighborhood.

Q. Did you say to Rosenbluh on that occasion, either in terms or in substance, that you had had a conversation with Mr. Fox in which you had explained to him it was about time he made arrangements to dispose of his business? That the Greater New York Film Rental Company was the only one left with the exception of a small concern out West with which you expected negotiations would be closed shortly.

4 That it was the proper time now, if he expected to do anything at all, to enter into negotiations, because you did not think the Greater New York Film Rental Company would be able to hold out against the General Film Company, a \$2,000,000 corporation? A. No.

Q. Did you have any such conversation with Rosenbluh? A. No.

Q. Did you make any such statements as those I have read and which are quoted from his testimony appearing at page 368, Vol. I? A. No.

Q. Did you say to Rosenbluh on that occasion that you were telling him of this conversation with Fox in all friendliness and that now was the time to sell? A. No. 1

Q. Did you say to Rosenbluh on that occasion, either in terms or in substance, that it would not be possible for the Greater New York Film Rental Company to continue independently since the Directors and men connected with the General Film Company had their plans laid for the exclusive control of the business of the United States, and they would not consider having the Greater New York Film Rental Company as a competitor? A. No. 2

Q. Did you tell him that the men connected with the General Film Company had their plans laid for the exclusive control of the business of the United States? A. No.

Q. Did you say to Rosenbluh on that occasion, either in words or in substance, that you would like to be in the position of a competitor against the General Film Company, and although you had accepted \$100,000 for your business you would gladly repay that \$100,000, and give \$100,000 in addition for the advantage or privilege of having a license that could not be cancelled? A. No.

Q. Had you as a matter of fact received \$100,000 for your business? A. No. 3

Q. Did you state to Rosenbluh on that occasion, either in terms or in substance, that you would not have sold your rental exchange to the General Film Company if it had not been for the fact that it was pointed out to you that it was to your advantage to sell with a clause in the license agreement revocable on fourteen days' notice, and after the matter had been put to you in that light you thought it advisable to accept the offer given you and you in turn advised every man who asked your opinion, and you were willing to do the same for Rosenbluh to accept what money might be offered? A. No. 4

Q. Had you as a matter of fact advised any man to accept what money might be offered him? A. No.

Q. Had any statement been made to you at the time you sold your stock and films to the General Film Company to the effect that with the fourteen-day clause in your license it was to your advantage to sell? A. No.

Q. Did you volunteer the advice or give the advice in any way attributed to you by Mr. Rosenbluh on the occasion of

1 the visit of that gentleman to your office in September, 1911?
A. No.

Q. Did it make the slightest difference to you whether or not the Greater New York Film Rental Company sold its exchange to the General Film Company? A. No.

Q. Had any one asked or instructed you to seek an interview with Fox or Rosenbluh with reference to the sale of the Greater New York Film Rental Company to the General Film Company? A. No.

2 Q. Do you remember another and subsequent interview with Mr. Rosenbluh, when he called upon you just after the cancellation of the license of the Greater New York Film Rental Company had been served, the date of such service being on or about November 14th, 1911? A. Yes.

3 Q. What did he say to you? A. He said, "I suppose you have heard the news," and I asked him what news, and he said, "The cancellation of the Greater New York Film Rental Company's license," and I said, "No, I had not heard of it," and he said he had received notice that morning, and he wanted to know if I would advise him what to do, and I asked him if he had told Mr. Fox about it, and he said Mr. Fox knew something about it, that he had telephoned him. I said, "I can't advise you in the matter. It seems to me, Mr. Fox is the man owning the exchange, to handle it," and he stated that he was to see Fox later in the day, and wanted to know if he could take a message of advice as to what to do, and I told him it was a matter I had absolutely nothing to do with, and therefore I could not advise him in any way.

4 Q. Did you say to him on that occasion, either in words or in substance: "Well, I told you that some time ago, when you asked me what was the best thing to do. I advised you and I advised you right. You did not seem to take my advice, and I don't know what else I can do for you now. However, Mr. Fox is a better man to handle the situation. You tell Fox to come over and have a talk with me, and I think we can somehow arrange this matter"? A. No.

Q. Did you tell him, as a matter of fact, he should have Fox come over and you would advise him? A. No.

Q. Did you have any authority to deal with Fox relative to the matter? A. None whatever.

Q. Was it a matter in which you were interested? A. None whatever.

Q. Was it a matter that came within the scope of your authority as General Manager of the General Film Company? A. No. 1

Q. At the time of the second interview with Rosenbluh, did you tell Rosenbluh that an independent exchange which was doing business in the West at the time you had a conversation with him in the preceding September, had since been absorbed? A. No.

Q. In the course of the testimony given by Louis Rosenbluh in this action, at page 376, he was asked the questions and gave the answers which I shall read to you:

"Q. After the formation of the General Film Company, and after it acquired these licensed exchanges in the City of New York, speaking from your observation of the business and the course of the prices, state whether or not there was any change in prices from the rental exchanges to the exhibitors? A. There was a gradual increase in prices. Q. After the formation of the General Film Company? A. Yes, sir. Q. About what did that aggregate? A. I should imagine, about forty per cent. increase." 2

Were you familiar with the prices charged by rental exchanges to exhibitors both before and after the formation of the General Film Company? A. To a certain extent. 3

Q. And was there a gradual increase of prices to the exhibitors, after the General Film Company had acquired a number of exchanges in the City of New York? A. No.

Q. Was there an increase of prices aggregating forty per cent. after the General Film Company had acquired the various exchanges in the City of New York? A. No.

Q. Has there been any increase of prices aggregating forty per cent. at any time within the past five years? A. No.

Q. Have the prices of motion picture service to licensed exhibitors increased to any appreciable extent in the City of New York in the past five years? A. No. 4

Q. How many releases are the licensed manufacturers producing per week at the present time? A. Fifty some odd. They vary from day to day.

Q. What competition does the General Film Company have in this field at the present time? A. And by that what do you mean?

Q. By that I mean, what companies are supplying complete service to exhibitors in New York at the present time?

1 A. The Universal, and the Mutual, and quite a number of feature concerns, but complete programs, I think, the Universal, and Mutual, and Greater New York Film Rental Company.

Q. Does the Universal supply a complete program to exhibitors? A. Yes.

Q. Of how many releases per week? A. I think—I am not sure whether it is twenty-eight or thirty-six.

Q. And does the Mutual supply a complete program to exhibitors in New York? A. Yes, sir.

2 Q. Do you know of how many releases? A. Not absolutely; I know it is something like thirty-eight or forty.

Q. Have you recently had a computation made of the number of exhibitors doing business in Greater New York? A. No.

Q. Are you now the General Manager of the General Film Company? A. Yes, sir.

Q. How long since you have been the General Manager? A. The 26th of January of this year.

Q. Prior to that time you were out of the business, were you not? A. A year and a half.

3 Q. At the present time is the General Film Company competing with the Greater New York Film Rental Company for business? A. Yes.

Q. What are your instructions to your outside men with respect to their course of dealing with exhibitors who are now taking service from the Greater New York Film Rental Company? A. To keep away from them.

Q. In what field do you seek to get new customers? A. New theatres and the unlicensed houses.

4 Thereupon, WALTER W. R. GREENE, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. Where do you live? A. Newark, New Jersey.

Q. Have you been employed from time to time by the Motion Picture Patents Company? A. Yes, sir.

Q. What work have you done at various times for the

Motion Picture Patents Company? A. Why, the checking 1
up of the theatres in New York City.

Q. What work did you do in the way of checking up thea-
tres, what was the process? A. Why, I had buff slips and
each one had a name of a different theatre in New York City,
or Newark, New Jersey, or Jersey City, as the case may be,
and I went around and investigated them to see whether
they were active or closed, and I added theatres on the list
that were not on the records of the Patents Company.

Q. Did you in December, 1913, go to Georgia by direc- 2
tion of the Motion Picture Patents Company, and personally
visit a number of towns and villages to get an accurate list
of motion picture theatres? A. Yes.

Q. How many towns did you personally visit at that time?
A. Oh, there were sixty-four towns with theatres that I vis-
ited, and I didn't keep the record of towns without theatres
that I visited. The total number was one hundred and
twenty-two towns visited.

Q. How many towns did you check up either by personal
visit or telephone communication? A. One hundred and
sixty-six I investigated.

Q. What was the total number of motion picture theatres 3
you found in the territory covered either by personal visit
or by telephone communication? A. One hundred and three
theatres, active.

Q. What do you mean by "active theatres?" A. Why, a
theatre that is showing, or any place, as the case may be,
that is showing or exhibiting pictures at least one day a
week.

Q. I show you a map of the State of Georgia, in which a
large section within the State boundaries is enclosed by
black dotted lines. Were the towns you visited and the 4
theatres you checked located in the area bounded by the
dotted line? A. All the territory was checked within that
line.

Mr. GROSVENOR: Did you go to all towns in that
territory?

The Witness: No, I telephoned or went to every town over
four hundred within that territory to find out if there was a
picture show.

1 Mr. GROSVENOR: You either telephoned or visited every town in Georgia that is embraced within the lines which appear on this map of Georgia?

The Witness: Every town over four hundred. The white space is within the dotted line. What I mentioned is the dark space—the white space was a piece of paper for the typewriting of the notice.

Mr. KINGSLEY: I offer this map of Georgia in evidence.

2 The map offered in evidence is marked by the Examiner, "Defendants' Exhibit No. 147."

By Mr. GROSVENOR:

Q. Part of these dotted lines which purport to embrace the territory in the State of Georgia which you visited is the State line between South Carolina and Georgia? A. A certain portion of it.

Q. That is all on the east? A. Down to a certain point, there it turns off.

3 Q. It is also on the northern part, bounded by the northern line of the State of Georgia? A. There is a small part in the northwestern part of the State that is omitted.

By Mr. KINGSLEY:

Q. Did you prepare a list of the towns in Georgia which you visited and which you checked? A. Yes, sir.

Q. Is it a correct list? A. Yes, it is.

Q. Is the list which I show you the list to which you have referred? A. That is the list.

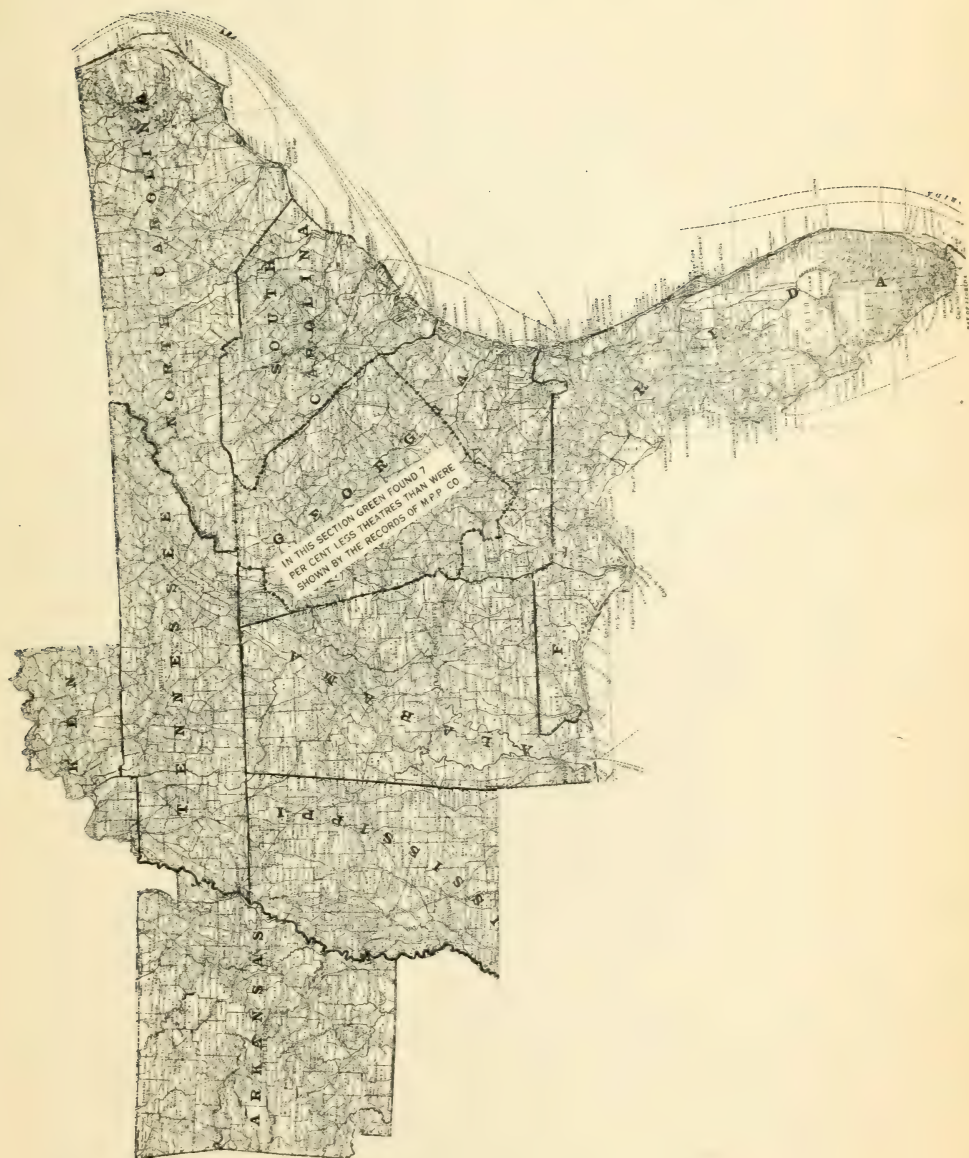
4 Mr. KINGSLEY: I offer it in evidence.

The list referred to and offered in evidence is marked by the Examiner, "Defendants' Exhibit, No. 148."

By Mr. GROSVENOR:

Q. Exhibit 148 is headed, "Towns in Georgia with Moving Picture Shows." Does this list (Defendants' Exhibit No. 148) include all the towns in the State of Georgia which had moving picture shows? A. Only the towns in the territory which I covered.

Defendants' Exhibit No. 147.



Q. Well, then, the title should be the towns in the district in Georgia visited by you which have moving picture shows? A. Yes, sir. 1

Q. That would be the correct heading for it? A. Yes, sir.

Q. And this heading is incorrect? A. That was just type-written by me for my own reference.

Q. Well, as it stands, "Towns in Georgia with Moving Picture Shows," it is inaccurate? A. Towns covered by me in Georgia.

Q. I say, it is inaccurate and should be amended in line with this suggestion? A. Yes, sir. 2

Q. And in the next paragraph is "New, or on records of M. P. P. Co." What does that mean? A. Why, there were some towns that I found, I think ten in number, where there were picture shows that the Patents Company had no record of.

Q. And those were added? A. Yes, sir, to the list.

Q. And the other towns you found included in this list were put on the list of the Patents Company? A. Yes, sir.

Q. Now, this second sheet, Sheet No. 2 of Defendants' Exhibit No. 148, is headed, "Towns in Georgia, Over 400, with No Theatres." And that should be amended to read, towns in the district in Georgia visited by you of over 400 population, having no theatres? A. Yes, sir. 3

Mr. GROSVENOR: I object to the introduction of Defendants' Exhibit No. 148, Sheets 1 and 2, containing as it does inaccurate headings and therefore it should not be printed in the record with these inaccurate headings, as in such case the headings would be misleading and give the appearance of something being the fact which the witness has testified was not the fact. 4

The Examiner: The witness is requested to place upon Defendant's Exhibit No. 148, Sheets 1 and 2, the proper headings.

Thereupon the witness marked Defendant's Exhibit No. 148, Sheet 1, as follows: "Towns in Georgia within dotted lines on Defendant's Exhibit 147 having Moving Picture Shows. (New or on Records of M. P. P. Company.)"

Thereupon, the witness marked Defendants' Ex-

- 1 hibit No. 148, Sheet 2, as follows: "Towns in Georgia, within dotted lines shown on Defendants' Exhibit No. 147, of over 400, having No Theatres (Census 1910.)"
- Defendants' Exhibit No. 148, Sheets 1 and 2, is as follows:

Defendants' Exhibit No. 148.

(Sheet 1.)

- 2 TOWNS IN GEORGIA WITHIN DOTTED LINES
 SHOWN ON DEFENDANTS' EXHIBIT 147 HAV-
 ING MOVING PICTURE SHOWS.

(New or on records of M. P. P. Co.)

- | | | | |
|---|--------------|---------------|---------------|
| | Augusta | Eatonton | Milledgeville |
| | Albany | Eastman | Monroe |
| | Athens | Forsyth | Newnan |
| | Atlanta | Fairburn | Rome |
| | Aragon | Fort Valley | Royston |
| | Ashburn | Gainesville | Sandersville |
| | Americus | Greensboro | Sparta |
| 3 | Barnesville | Griffin | Sylvester |
| | Bartow | Hartwell | Tallapoosa |
| | Byromville | Hawkinsville | Thomaston |
| | Carrollton | Hogansville | Thomson |
| | Cartersville | Jackson | Toccoa |
| | Cedartown | Lithonia | Tifton |
| | Commerce | Lindale | Union Point |
| | Cordele | La Grange | Vienna |
| | Cochran | Lavonia | West Point |
| | Columbus | Lawrenceville | Washington |
| | Covington | Macon | Waynesboro |
| 4 | Dublin | Marietta | Winder |
| | Dallas | Madison | Wrightsville |
| | Elberton | McRae | |
| | East Point | Millen | |

(Sheet 2.)

1

TOWNS IN GEORGIA WITHIN DOTTED LINES
SHOWN ON DEFENDANTS' EXHIBIT NO. 147, OF
OVER 400, HAVING NO THEATRES. (Census,
1910.)

Abbeville	Elijay	McDonough	
Aecworth	Experiment	Montezuma	
Adrian	Farmington	Nelson	
Apalachee	Fayetteville	Norcross	
Arabi	Grovetown	Norman Park	
Austell	Greenville	Oglethorpe	2
Baldwin	Grantville	Oxford	
Ball Ground	Gordon	Palmetto	
Blue Ridge	Hamilton	Perry	
Bremen	Harrisonville	Pineview	
Butler	Harlem	Poulan	
Buckhead	Helena	Rutledge	
Buford	Hazlenut	Rockmart	
Buena Vista	Hampton	Rosswell	
Buchanan	Hapeville	Richland	
Bowman	High Shoals	Smyrna	3
Cave Spring	Jefferson	Social Circle	
Canton	Jewell	Stratham	
ChIPLEY	Jeffersonville	Smithville	
Crawfordsville	Jonesboro	Stone Mountain	
Crawford	Kennesaw	Stillmore	
Clayton	Kirkwood	Stockbridge	
Clarksville	Kingston	Senoia	
Canon	Lexington	Talbotton	
Conyers	Leesburg	Tennville	
Cusseta	Locust Grove	Temple	
Davisboro	Loganville	Unadilla	4
Demorest	Lumber City	Union City	
Decatur	Lumpkin	Villa Rica	
Dexter	Maysville	Warrenton	
Doerun	Marshallville	Wadley	
Douglasville	Manchester	Woodbury	
Duluth	Midville	Wrens	
Ellaville	Mount Vernon	Zebulon	

102 towns investigated and no theatres found. 102
without.

1 By Mr. KINGSLEY:

Q. Did you in January, 1914, go to Ohio by direction of the Motion Picture Patents Company, and personally visit a number of cities and towns and villages to get an accurate list of motion picture theatres? A. Yes, sir, I did.

Q. How many towns did you personally visit at that time? A. One hundred and twenty-nine towns personally visited.

Q. How many towns did you check up by telephone? A. Approximately 37; I didn't keep a record of them.

2 Q. What was the total number of motion theatres you found in the territory covered? A. Two hundred and twenty-two.

Q. I show you a map of the State of Ohio, in which a large section within said boundary is enclosed by black lines. Were the towns you visited and the towns you checked located within the area bounded by this black line? A. Yes, sir.

Mr. KINGSLEY: I offer this map of Ohio in evidence.

3 The map offered in evidence is marked by the Examiner, "Defendants' Exhibit No. 149," but will not be inserted here, but copies of it will be inserted at this point in the revised copies of the record.

By Mr. KINGSLEY:

Q. Have you a list of the towns in Ohio which you visited and which you checked? A. I have.

Q. Will you produce it? A. Yes, sir.

Q. Is this a correct list? A. That is a correct list.

4 Q. And does it contain both the towns that you visited and those which you checked up by telephone? A. The towns visited are included with theatres and without theatres. The towns telephoned to are included in the list of towns without picture shows.

Mr. GROSVENOR: I move to strike out the answer as being unintelligible.

Mr. KINGSLEY: I offer it in evidence.

The list offered in evidence is marked by the Examiner, "Defendants' Exhibit No. 150," and is as follows:

Defendants' Exhibit No. 149.



Defendants' Exhibit No. 150.

1

TOWNS IN OHIO OVER 400 (CENSUS 1910) WITHIN
BLACK LINE OF DEFENDANTS' EXHIBIT 149,
NOT HAVING MOVING PICTURE SHOWS.

Avon	Genoa	Scott	
La Grange	Elmore	Continental	
Shiloh	Gypsum	Oakwood	
Lexington	Kelly's Island	Kalida	
Sulphur Springs	Catawba Island	Vaughnsville	2
Caledonia	Sylvania	Beaverdam	
Agosta	Alvordton	Cairo	
Ridgeway	Kunkle	Pandora	
Roundhead	Luckey	Glandorf	
Alger	Rising Sun	Hamler	
Harrod	Vanlue	Hoytville	
La Fayette	Rawson	Haskins	
Wharton	Mount Blanchard	Whitehouse	
McCutchenville	Cygnnet	Liberty Center	
Bettsville	Jerry City	Grand Rapids	
Republic	Rudolph	Waynesfield	3
New Washington	Portage	New Knoxville	
Wakeman	Waterville	Evansport	
Milan	Perrysburg	Lyons	
Berlin Heights	Cridersville	Lakeside	
North Fairfield	Elida	Arlington	
Castalia	Ottoville	Lindsey	
Woodville	Middlepoint		

Total number of towns, in territory covered, with no
theatres—68.

4

**1 TOWNS IN OHIO WITH MOVING PICTURE SHOWS,
WITHIN BLACK LINE ON DEFENDANTS'
EXHIBIT 149.**

	Wapakoneta	Mansfield	Sycamore
	Antwerp	New London	Tiffin
	Briceton	Oberlin	Gibsonburg
	Convoy	Shelby	Huron
	Grover Hill	Lorain	Marblehead
	Hicksville	S. Lorain	Oak Harbor
	Ohio City	Wellington	Port Clinton
2	Paulding	Ada	Put-in-Bay
	Payne	Bucyrus	Sandusky
	Sherwood	Dunkirk	Vermilion
	Van Wert	Forest	E. Toledo
	Willshire	Kenton	Toledo
	Bluffton	La Rue	Fayette
	Columbus Grove	McGuffey	Metamora
	Defiance	Marion	Pioneer
	Deshler	Mt. Victory	Arlington
	Leipsic	Nevada	Bowling Green
	Maumee	Prospect	Bradner
8	Napoleon	Upper Sandusky	Findlay
	Ottawa	Attica	McComb
	Spencerville	Bellevue	No. Baltimore
	Weston	Bloomdale	Prairie Depot
	McClure	Bloomville	Archbold
	Rossford	Carey	Delta
	Holgate	Chicago	Swanton
	Amherst	Chicago Junct.	Wauseon
	Belleville	Clyde	Pemberville
	Butler	Fostoria	Lima
4	Crestline	Fremont	Minster
	Elyria	Greensprings	New Bremen
	Galion	Monroeville	St. Mary's.
	Grafton	Norwalk	
	Greenwich	Plymouth	

By Mr. GROSVENOR:

Q. Witness, this exhibit (150) consists of two lists; one of the lists purports to be a list of all towns in the territory you visited in Ohio which have moving picture shows? A. It does.

Q. And that list includes such towns with moving picture shows in the territory visited by you, whether you ascertained that fact by personal visit or by personal telephone communication? A. I don't quite understand the question.

Q. Well, you made this list in part by visiting the towns? A. Yes.

Q. And in part by telephoning? A. Why, if I found I had any theatre that was active there, and had no record of it, and I found it was in the town, I would go to that town personally. I personally visited every town that had a moving picture show in the territory covered.

Q. I didn't understand what you said about telephoning on your direct examination in identifying this list? A. I telephoned every town of over 400 which the Motion Picture Patents Company had any record of a picture show there, or a theatre, and if they had a theatre I would go to that town and investigate the theatre.

Q. Well, then, every one of these towns that has a theatre, you visited? A. I visited, yes.

Q. And then put their names down on this list? A. Yes, sir.

Q. And every town that has no theatre, the most of those you visited, also? A. The most of them I visited.

Mr. KINGSLEY: Then every theatre you have reported here in your Ohio checking, you know personally to exist?

The Witness: On the dates that I investigated them.

Mr. KINGSLEY: And the towns which are reported here as having no theatres are towns which in the main were investigated by telephone?

The Witness: Well, the most of them were on the line of travel.

By Mr. KINGSLEY:

Q. So you visited a great many of them, too? A. There were about, approximately, I guess, about thirty-seven or forty that I telephoned to with no theatres. The rest I went through.

1 Cross examination by Mr. GROSVENOR:

Q. What were some of the larger towns in Ohio that you visited, Mr. Greene? A. Toledo, Lima—

Q. Sandusky? A. Sandusky, Mansfield, Lorain.

Q. In those cities you found theatres that were open every day, did you not? A. The most of them were run every day.

Q. On the other hand, in towns of 400, or thereabouts, population, a theatre would be open only once a week? A.

2 One or two nights a week.

Q. And in the smaller towns it is a general rule that the theatres are open only once or twice a week? A. Well, as as a general rule, they run, I guess, either full time, or three days a week.

Q. What do you mean by "they run"? A. The picture shows in the small towns.

Q. What do you call a "small town"? A. Between 500 and 1200.

Q. Then you did not find any difference in the running of the theatres in the small towns and in the cities?

3

Mr. KINGSLEY: I object to the question on the ground that it is not a correct summary of what the witness has testified to.

Mr. GROSVENOR: I am trying to get at the fact. I understood you to say one thing and then to say another. Now, what is the fact?

The Witness: In the large cities—is that what you mean—the theatres run every day, and in the very small, what I would call small towns, they run from one night a week to two nights or three nights a week.

4

Whereupon, at 12:30 o'clock P. M. on this March 9th, 1914, the hearings were adjourned until 10 o'clock A. M., March 10th, 1914, to be resumed at Room 159, Manhattan Hotel, New York City.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

1

<p style="text-align: center;">UNITED STATES OF AMERICA, Petitioner,</p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">MOTION PICTURE PATENTS Co. and others. Defendants.</p>	}	<p>No. 889.</p> <p>Sept. Sess., 1912.</p>
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NEW YORK CITY, March 10, 1914.

The hearings were resumed pursuant to adjournment, at ten o'clock A. M., March 10, 1914, at Room 159, Manhattan Hotel, New York City.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

3

JOSEPH R. DARLING, Esq., Special Agent.

CHARLES F. KINGSLEY, Esq., GEORGE R. WILLIS, Esq., and FRED R. WILLIAMS, Esq., appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin, Armat Moving Picture Company, Melies Manufacturing Co. and Gaston Melies.

J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

4

HENRY MELVILLE, Esq., attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

JAMES J. ALLEN, Esq., appearing for Vitagraph Company of America, and Albert E. Smith.

- 1 Thereupon, GEORGE K. SPOOR, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. CALDWELL:

Q. Where do you live? A. Chicago, Illinois.

Q. You are one of the defendants in this case, are you?

A. Yes, sir.

- Q. What connection have you with the defendant Essanay Film Manufacturing Company? A. I am the President
2 of that company.

Q. How long have you been the President of that company? A. Since 1907.

Q. And that is a company engaged in the production of motion pictures, is it not? A. Yes, sir.

Q. Prior to 1907 were you engaged in the film business in any of its phases? A. Yes, sir, I was in the exchange business and the exhibition business.

Q. How long had you been in the exhibition business? A. Well, since 1895, the latter part of 1895.

- Q. By being in the exhibition business, do you mean the
3 owning or leasing or operating of theatres? A. No.

Q. Just what do you mean? A. I mean the furnishing of complete exhibitions to vaudeville theatres. I had a circuit of vaudeville theatres in which I furnished complete exhibitions, the operator, the machine, and the entire service.

Q. Then you didn't commence the manufacturing or producing business until the year 1907? That is correct, is it? A. That is correct, yes.

- Q. Will you state the extent of the business which you
4 did in 1907? A. We commenced in a small way, and would release a picture—

Q. About what month was it that you commenced in 1907? A. I think about in May, May or June, and we released a picture of from five to seven hundred feet about once in ten days, or maybe once in two weeks.

Q. And did you have a studio at that time? A. No, we did not have a studio at that time. We worked out on the street and in a lot.

Q. Did you have any printing or developing plant? A. We had a small printing plant, and producing plant.

Q. Did you have any regular company of actors in your employ at that time? A. None at all, no, sir. 1

Q. How did you get them? How did you employ them, just by piece work? A. Yes, sir, employed them as we wanted them.

Q. Were you sued during 1907 by the Edison Company on any of the patents? A. We were not.

Q. Did you know of the pendency of the litigation between the Edison Company and the other producers of motion pictures? A. Yes, sir.

Q. Can you state some of the suits you knew were pending about that time? A. Why, I knew of the Biograph suit, and the Lubin, the Selig, the Vitagraph, and there may have been one or two others that I do not recall. 2

Q. Did you know of the decision of the United States Circuit Court of Appeals here in New York in the litigation between the Edison Company and the Biograph Company? A. Yes, I did.

Q. Over the camera patents? You heard of that at the time it was rendered? A. Yes, sir, I did.

Q. And read it in the trade papers? A. I read it in the theatrical papers, yes, sir. 3

Q. Were you aware also of the litigation between the Edison Company and Selig of the Selig Polyscope Company, in Chicago, over the camera patents? A. Yes, sir.

Q. And did you know of the issuance of an injunction against the Selig Company by Judge Kohlsaat, of Chicago? A. Yes, sir, I did.

Q. Do you recall about what time that was? A. That was in 1907. I think, along in the latter part. It was in 1907.

Q. Prior to the rendering of that decision did you make application to the Edison Company for a license under its patents? A. I did not. 4

Q. You subsequently made application? A. Yes, sir.

Q. Why did you wait from July, when you first commenced business, until later on when you did make application? Did you make your application before or after the decision in the Selig suit? A. Why, after the decision.

Q. Why did you wait all that time before applying for a license? A. I waited to see how Selig came out in the suit, whether he won it, or did not win it.

1 Q. Do you recall about what time you started negotiations to get an Edison license? A. Yes, in January, 1908.

Q. Whom did you see connected with that company? A. Mr. Moore—Alexander Moore—and Mr. Moore referred me to Mr. Gilmore, and then to Mr. Pelzer, and I finally concluded my license arrangement with Mr. Dyer.

Q. Was anything said about the number of licenses to be issued and the amount of the royalty? A. Yes, I was informed there were seven licenses to be issued, and that the royalty would be one-half a cent a foot.

2 Q. Did you subsequently become an Edison licensee? A. Yes, sir.

Q. About what time? A. In the latter part of January, 1908.

Q. Now, after becoming an Edison licensee, did you extend your business in any way, and if so, state in what ways you extended it? A. We did extend our business. We commenced to construct, or prepare, rather, a studio for doing interior work, and put in lighting equipment, and put in new machinery, and developed our plant, and prepared to go ahead and manufacture, which we did, and increased our business.

3 Q. You also conducted an exchange at that time, did you not? A. I did, yes, sir.

Q. What was the name of your exchange? A. George K. Spoor & Company.

Q. Did that exchange become what was known as an Edison licensed exchange? A. Yes, sir.

Q. And a member of the Film Service Association? A. Yes, sir.

4 Q. Do you recall about how much royalty you paid the Edison Company during the year 1908? A. That was the first year; I believe, in the neighborhood of six thousand dollars.

Q. And in point of capital invested, did you state the amount of capital that you invested in 1908 in your plant, after you became an Edison licensee? A. About twenty-five thousand dollars, in the studio and plant.

Q. Why did you take out an Edison license? A. Well, the Biograph lost the suit over the Warwick camera, and later Selig had lost his suit, and there was not much of any place else to go, and it was time to try to make some arrangement with the Edison Company, and I proceeded to do so.

Q. At any time while you were in the exhibition or exchange business, prior to the time you became a producer or manufacturer, were you ever threatened with litigation over the patents? A. I don't remember. 1

Q. Well, do you recall whether you ever received a circular or other notice from the Armat Company as to infringement of the Armat patent? A. I don't recall that; no, sir.

Q. Did you ever while you were in the exhibition business exhibit in Washington, D. C.? A. Yes, sir.

Q. Did you have any trouble with Armat there? A. Yes, sir, I was compelled to pay Mr. Armat a license fee of twenty-five dollars for the week that I exhibited at the Chase Opera House there with the Orpheum Road Show. 2

Mr. GROSVENOR: What year was this?

The Witness: I believe that was in—well, I can't state exactly. I think possibly 1902, or 1903.

Mr. GROSVENOR: I object to this testimony, and move to strike it out on the ground that it relates to a time too remote to have any bearing on the issues in this case, and is entirely disconnected with the testimony previously given by the witness. 3

By Mr. CALDWELL:

Q. Was the Essanay Company sued in 1908 by the Biograph Company? A. Yes, sir.

Q. Did you know in 1908 of the pendency of the litigation between the Edison Company and the Biograph Company? A. Yes, sir.

Q. Over their patents? A. Yes, sir.

Q. What effect, if any, did this litigation have on your business in 1908? A. Why, it had anything but a good effect. The business was in a very uncertain condition, and was not in such shape as to make one believe it was a good thing to invest money in. 4

Q. At that time, in point of fact, had you been contemplating investing further capital in your business? A. Yes, sir.

Q. And did the pendency of that litigation act as a deterrent?

1 Mr. GROSVENOR: Objected to, as leading.

By Mr. CALDWELL:

Q. Did the pendency of that litigation influence you in any way as to making further investments in the business?

Mr. GROSVENOR: Objected to also, as leading.

The Witness: Yes, sir.

2 By Mr. CALDWELL:

Q. Did you receive any inquiries from any of your customers as to this litigation and what effect it might have upon them or their business? A. Yes, sir.

Q. Were those inquiries few or numerous? A. Numerous.

Q. Did the Essanay Company subsequently become a licensee of the Motion Picture Patents Company? A. Yes, sir.

Q. Did you have anything to do with the organization of the Motion Picture Patents Company? A. No, sir.

3 Q. You were never a stockholder or Director in that company? A. No, sir.

Q. Why did you want a license from the Motion Picture Patents Company? A. I thought that if the Biograph Company joined with the Edison Company the legal warfare would be ended, and it would then look like a better business proposition and more safe to go ahead, and the litigation would stop and we had something definite and desirable to proceed with.

4 Q. During the year 1908 were you in competition with the other Edison licensees, and I am speaking now of the producing end of your business? A. Yes, sir, indeed.

Q. In what ways were you competing with the other licensees? A. In the production of photoplays, the engaging of people, the building of machinery to turn out superior work, and in most every way.

Q. Did you make any special efforts to stimulate interest on the part of the exhibitors in your pictures? A. Yes, by advertising, and in fact we did everything possible to stimulate interest in our pictures, and created a demand for them over the pictures of other makers.

Q. Did that competition continue after you became a Patents Company licensee? A. Yes, sir. 1

Q. Are you in competition with the other producing licensees of the Motion Picture Patents Company? A. Yes, sir, it has always continued.

Q. In the same respects? A. Only more so.

Q. What is the extent of the competition between you and the other licensed producers and the independent producers, so-called? Is that competition of the same character? A. Yes, it is of the same character, and it seems to be even stronger than at any time in the business at this time. You are asking about the present time? 2

Q. Yes? A. We have a difficult time keeping our people. The other concerns are offering them all kinds of inducements to leave us, and in several instances they have accepted engagements at twice or more, and sometimes three or four times the amount of salary, and they outbid us on photo plays or productions, and they buy them and run the prices way up—and in fact, I should say, the competition is stronger than it ever has been in every way. I do not see how it could be considered otherwise.

Q. Is there any competition for the services of stage directors or scenic artists? A. Yes. Now, that applies to them the same as to the actors and actresses and to the other people, even in the mechanical department. 3

Q. Have you had any personal experience with respect to the taking away of your actors and actresses by your competitors? A. I am continually having that experience. It commenced with the almost cleaning out of my plant, back four or five years ago. They took forty-seven people out of sixty out of my plant.

Mr. GROSVENOR: Whom do you mean by "they?" 4

The Witness: I mean the independent concern called the American Film Manufacturing Company, in that one instance, including my factory superintendent, and directors, and actors, and photographers and developing men. In fact, they just left me nothing, and I was compelled to go into Court and get an injunction to stop them from breaking up my business.

1 By Mr. CALDWELL:

Q. Is that concern, the American Film Manufacturing Company, still in existence to-day? A. Yes, sir.

Q. And doing business? A. Yes, sir. And recently—may I continue?

Q. You may. A. And recently the Universal Company took one of our men whom we had made very prominent and popular under the name of—"Alkali Ike," was the title the man was known under—Augustus Carney was his name. He was located in California with our California
2 company, and they induced him to take a vacation and go to England and Scotland, and while over there he notified us he was not coming back and that he had signed up with the Universal concern. Only two weeks ago our leading man in the Chicago company, Mr. Bushman, informed me that he had been—

Mr. GROSVENOR: I object to what he was informed as hearsay—

3 The Witness: Well, he told me he was going to quit.

Mr. GROSVENOR: —and also, to all of this testimony as immaterial.

By Mr. CALDWELL:

Q. Is this kind of competition between the different producers as to the services of artists going on all the time? A. Yes, sir, all the time.

Q. Does it extend to the competition between the licensed producers among themselves— A. Yes, sir.

4 Q. —as well as competition between the licensed, on the one hand, and the unlicensed on the other? A. Yes, sir, it does, indeed.

Q. Has it been your experience that the cost of negative production has increased since 1909? A. Yes, it has increased very much.

Q. First, take the question of salaries: What was the cost? A. High salaries.

Q. First, take the question of salaries: what was the

average salary you paid in 1909 to your better class of artists? A. From twenty to thirty dollars. 1

Q. What is it to-day? A. Well, it is from—the better class of artists—one hundred and fifty dollars, one hundred and seventy-five dollars, and three hundred dollars, and a number of people at sixty-five dollars and seventy dollars.

Q. How many artists or actors and actresses did you have in your employ regularly in 1909? A. Six or seven.

Q. How many have you at the present time? A. Fully a hundred, that is, in both California and Chicago.

Q. What other factor or element enters into the increased cost of the negative? You have mentioned salaries of actors. A. Well, the cost of the production, the building of the production, the scenery, and all the mechanics all the way through, are high class. Camera men are much higher. 2

Q. What did you pay camera men in 1909? A. We paid them twenty-five dollars, and we pay them now fifty and sixty dollars and as high as a hundred and fifty dollars.

Q. And stage directors, what did you pay them in 1909? A. Sixty dollars a week, and we pay them from one hundred and fifty to two hundred and twenty-five dollars now. 3

Q. How about the cost of your scenarios or photoplays? A. In 1909 they cost scarcely nothing, ten and fifteen dollars, but we pay a great deal more to-day, that is a hundred dollars, a hundred and fifty dollars, and two hundred and fifty dollars. There is no real limit to what we have got to pay today.

Q. Will you state what investments you have made in your business since you became a Patents Company licensee? A. We have made very heavy investments in our business. We have built an entire plant, and have continually added to it. Also, we have built a second plant in California— 4

Mr. GROSVENOR: I make the same objection to all this line of testimony, and to all topics on this subject, as heretofore made, namely, that it is all immaterial and irrelevant.

The Witness: —a second plant in California. In fact, we have an investment in our plants and properties today

- 1 representing an expenditure possibly of over six hundred thousand dollars.

By Mr. CALDWELL:

Q. As compared with how much of an investment in 1908, before you became a Patents Company licensee? A. Twenty-five or thirty thousand dollars.

Q. How many studios did you say you had in Chicago? A. We have two.

- 2 Q. And one in California? A. One in California, yes, sir.

Q. What would you say, from your experience, is the relative amount of increased cost of negative production now over what it was in January, 1909? A. From three to five times more.

Q. Has there been a corresponding increase in the number of prints which you release from each subject? A. No, there has been a decrease.

Q. What percentage of decrease would you say since then? A. Oh, as much as half.

- 3 Q. What percentage of pictures produced by your company are of purely theatrical subjects, such as dramas, comedies, etc., as distinguished from scenic, topic or educational pictures, or scientific pictures? A. Fully ninety-five per cent. are produced by actors, taken from the theatrical profession.

Q. You are a Director of the General Film Company, are you not? A. Yes, sir.

Q. How long have you been a Director? A. Since its organization.

- 4 Q. What part, if any, did you take in the organization of that company? A. I was one of the incorporators.

Q. Do you recall when the project of organizing a rental agency by the licensed producers was first discussed? A. Some time previous to its organization, some short period, two or three months may be.

Q. Do you recall the date of its organization? A. Yes, sir, in April, 1910.

Q. Now, with that date in mind, about how long would you say the project was first discussed, or you heard it first discussed? A. Oh, I would say some time in January.

Q. Did you favor the project at first? A. No, not altogether. 1

Q. What were the reasons which influenced you in deciding to join that organization? A. I thought it would be a good idea to have an exchange or two that could be operated along such lines as the manufacturers, or rather those manufacturers who had been in the exchange business seemed to think that an exchange should be operated on, and along lines that would comply with the requirements of the situation; the giving of a service that would prove more desirable and much better for the exhibitor than it had been possible to obtain before. The conditions with the exchanges were very bad. They were fighting each other in every way possible, and it seemed like it would be a good thing to have something of that kind just to start with. 2

Q. You were in the exchange business as well as the producing business at that time? A. Yes, sir.

Q. You had had experience with both ends? A. Yes, sir.

Q. And in what respects did you think the exchange business was unsatisfactorily conducted at that time other than those, if any, that you have already mentioned? A. Well, it seemed to be impossible to conduct an exchange in a satisfactory manner. It was hard to satisfy the exhibitor because he always wanted to fight the man across the street, and when he wanted to fight the man across the street, why, your exchange was fighting the other exchange that was serving the man across the street, and they were running the same pictures, and because one exchange could not successfully hold that exhibitor, to keep down the other fellow, why, the exchange was in constant hot water. It was hard to keep an exhibitor from leaving you and going to another exchange. You could not keep your exhibitors, or handle them, or do much of anything with them. That was my experience as an exchange man. 3 4

Q. Then you regarded the business, from the standpoint of an exchange man, as hazardous and uncertain?

Mr. GROSVENOR: Objected to, as leading.

1 By Mr. CALDWELL:

Q. State what you know in that respect, what was your experience as an exchange man? A. My experience was that my business in the exchange end of it was becoming less and less. We could not hold our business, and our business was not in good shape. It was not in anything like the shape it had been, some time previous, and before so many exchanges came into the business.

2 Q. Did you know whether or not many exchanges at that time were owned by, or rather were interested in the theatres that they served? A. That is so, there were a great many exchanges.

Q. Did you regard that as an objectionable thing in the business? A. Yes, sir, very objectionable, because the exchanges owning theatres gave their theatres preference as to films. The other theatres in the neighborhood could not get a look in, and they would expect the exchange that was selling them to hold right up with them, and it was impossible for an exchange to do anything, it could not supply service like that in so many quarters at once.

3 Q. Confining your answer now to exchanges with which you had business as a producer, and to which you leased your films: as a general rule were they of good financial responsibility or not? A. As a general rule they were not of good financial responsibility. They were doubtful.

Q. Did you lose money through the failure of exchanges to pay your bills? A. In a great many instances, yes, sir.

Q. Were there any complaints on the part of exhibitors about that time as to the character of the service they got from the exchanges? A. Yes, there was a good deal of complaint. I have stated that before.

4 Q. Personally were you in receipt as President of the Essanay Film Manufacturing Company of complaints from exhibitors in your section there? A. Oh, yes, indeed—

Q. —that the service was not satisfactory? A. Yes, sir.

Q. So far as you were concerned, was it your purpose in organizing, or assisting to organize the General Film Company, to acquire all of the licensed exchanges in the United States? A. No, not at all, sir.

Q. Did you hear any of your associates in that organiza-

tion express any such purpose or intention? A. No, sir, I never did hear anything of the kind. 1

Q. Mr. Spoor, what became of your exchanges, the George K. Spoor & Company exchange? A. I sold it to the General Film Company.

Q. Were the operations of that exchange confined to Chicago and the adjacent territory principally? A. Yes, sir.

Q. Did you find that business a profitable one for a year or so before you sold it? A. No, not as profitable as it should have been or was only the year before that. It was declining right along. 2

Q. Who started the negotiations between you and the General Film Company for the purchase of your exchange, if you recall? A. I offered it to them.

Q. You were satisfied with the price that you got for it, were you? A. Yes, sir, indeed.

Q. Did you ever hold any office in the General Film Company other than that of a Director? A. No, sir.

Q. Then did you or did you not know anything about the details of the negotiations for the purchase of the various exchanges? A. I did not. 3

Q. Will you state the number of weekly releases of the Essanay Company during the years 1910, 1911, 1912 and 1913? A. In 1909 and part of 1910 we had one release a week; in part of 1910 and part of 1911 we had two; the last part of 1911 and into 1912 we had three; and then we increased later in 1912 and through 1913 to four and five, within a few weeks. The last increase was within two months.

Mr. GROSVENOR: Have you given the present number? 4

The Witness: And the present number is five releases, four single reels and one double reel, which makes six reels.

Mr. GROSVENOR: Does that include any specials you may use from time to time?

The Witness: That does not include any of the specials. During this past Summer in addition to that we supplied some twenty or twenty-two negatives as specials, made as specials.

1 By Mr. CALDWELL:

Q. Do you know a man named James J. Lodge, of Chicago, who was called as a witness by the petitioner in this case? A. I met him once.

Q. The witness Lodge has testified that at meetings of the Edison licensees, and subsequently at meetings of the Patents Company licensees which he attended, a discussion was had among the manufacturers as to establishing a rental agency of their own. Did you ever see Lodge at any meeting of the Edison licensees? A. Not of the Edison licensees.

Q. Did you ever see him at any meeting of any of the licensees? A. He was at one meeting of the Edison licensees and the Biograph Company, at the first meeting, when the Patents Company contract was discussed. That is the only meeting I ever saw him at.

Q. Was there ever at any time any discussion at any of these meetings prior to 1910 as to the organization by the manufacturers of a rental agency? A. No, sir.

Q. Do you know a man by the name of Streyckmans? A. Yes, sir.

Q. He was at one time the editor of or connected with a paper published in Chicago called the "Show World," was he not? A. Yes, sir, I think he was.

Q. Do you recall the so-called warfare between the Biograph and the Edison interests in 1908? A. Yes, sir.

Q. While that was in progress did you at any time tell Streyckmans that he was very foolish to exhibit in his paper the advertisements of George Kleine? A. No, sir, I did not.

Q. Or, that it would probably lose Streyckmans the friendship and the advertising patronage of the Edison Company and its licensees? A. I never told Mr. Streyckmans anything of that kind.

Q. And did you ever tell him that George Kleine would undoubtedly be crushed out of business in a very short time? A. No, sir.

Q. Have you read the testimony of the witness Lodge at pages 1173 and 1174, Vol. II, of the record in this case? A. I believe I did some time ago.

Q. He states that you told him or mentioned the fact to him that through the exhibitors' royalties a fund was created for the purpose of litigation. Did you ever tell him that in words or in substance?

Mr. GROSVENOR: Objected to, as leading.

1

The Witness: I never spoke a half dozen words to Mr. Lodge in my life.

By Mr. CALDWELL:

Q. He says that it was talked about at that meeting, December 18th, 1908, that this was to raise a gigantic fund for the purposes of litigation, so that the individual manufacturers would not be called upon to contribute. Was anything like that said at this meeting? A. At that meeting Mr. Lodge attended? 2

Q. Yes? A. It was not. We were simply listening to the contract being read and were discussing its points, and nothing more was said to prolong the time. In fact, it took nearly all the afternoon, and when it was finished it was close to dinner time and everybody left, and there was no discussion that I heard of, or know anything about, of that kind.

Q. Do you know a man named William H. Swanson, a witness called on behalf of the petitioner in this case?

A. Yes, sir.

3

Q. How long have you known him? A. Possibly eight or nine years.

Q. I will read you some of the questions put to the witness Swanson and the answers that he gave at pages 305, 306 and 307, Vol. I, of the record: "Q. Mr. Swanson, did you attend any meeting at the Republican Club the night before the first meeting of the rental exchanges at their hotel, the Imperial? A. I slept at the Republican Club two nights preceding that meeting. Q. Did any manufacturers of motion picture films come around to you there and talk with you about the conditions in the moving picture business? 4

A. They did. Q. Among others, who came to see you? A. Mr. Selig, and Mr. Spoor, and Mr. Kleine. We all slept in the same room for two days and two nights. We stayed in the same room, rather."

Did you and Mr. Kleine and Mr. Selig call on Mr. Swanson at the Republican Club at that time? A. Mr. Swanson was not a member of the Republican Club. Mr. Kleine and Mr. Selig and myself were stopping at the Republican Club, and are members of that club.

1 Q. Then, of course, you did not call on Mr. Swanson at that club? A. No, sir.

Q. Did you see Swanson at the Republican Club at any time? A. Yes, sir.

2 Q. State how it was that he happened to be there? A. Well, there had been some meeting of the Film Service Association, of some exchange managers at the Imperial Hotel during the day, which I had not attended, and that evening Mr. Kleine and Mr. Selig and myself were around uptown here, and about two o'clock we went into Jack's Restaurant, and we were sitting there, and a lot of exchange men came in and were sitting over at another table, and among them was Mr. Swanson, and when he saw Mr. Selig and myself, and Mr. Kleine, he invited himself over and sat down with us, and he hooked up to us pretty strong. In fact, we got up and started to go to the Club, which we did, and Mr. Swanson came right along with us uninvited. He walked over there and into the Club, also uninvited, and he came upstairs and went to Mr. Kleine's room, and he was still with us, and Mr. Kleine sent down for some Apollinaris water—

3 Mr. GROSVENOR: Are you sure it was Apollinaris water?

The Witness: I know it was Apollinaris, because Mr. Kleine has a friend who runs the Apollinaris Works, and he would not take anything else.

By Mr. CALDWELL:

4 Q. Go ahead Mr. Spoor? A. And we hinted that he might—

Mr. GROSVENOR: Mr. Kleine or Mr. Swanson?

The Witness: Mr. Swanson might go and let us retire, but there was no going. The only thing we could do was to go down stairs and get a room for him down at the other end of the hall, which we did, and we took Mr. Swanson down there and put him in that room, and that was the last I saw of Mr. Swanson. This was about 3:30 in the morning, and I didn't see Mr. Swanson any more, and I never saw him at the Republican Club.

Mr. GROSVENOR: Did you drink Apollinaris
until three o'clock? 1

The Witness: Yes, sir, Apollinaris, and some more stuff, too.

By Mr. CALDWELL:

Q. Mr. Swanson swears he spent two days and two nights with you gentlemen in the same room at the Republican Club? A. He did not. He was not there, only the time I have mentioned. In fact, his effects were at some other place in New York, and he might have slept with his clothes on for all I know. 2

Q. Mr. Swanson was asked the following question to which he gave the following answer: "Q. Was anything said by any of these gentlemen as to the formation of the Patents Company and the proposed change in the manner of doing business? A. Yes, sir, there was." Now, was the formation of the Patents Company discussed between you that night? A. It might have been referred to, but not as a matter of discussion.

Q. And reading further from his examination: "Q. State to the best of your recollection what was said? A. Of course, it was about the only matter that was discussed during the two days that we were in that room. Q. You knew at that time that the two factions had gotten together, and that the Patents Company had been organized some weeks earlier? A. Yes, I knew it, for the reason that I had been furnished with a typewritten copy three days before this Imperial Hotel meeting, by an outsider, who submitted it to me, and gave me the idea of the thing. I knew it before any one else did, in the exchange business, other than the manufacturers who were in the exchange business. The conversation in the room—Mr. Selig, Mr. Kleine and Mr. Spoor endeavored to show me what a great benefit it would be to themselves to have this thing go through, as they had outlined it, or as it had been outlined." Did you, or Mr. Selig or Mr. Kleine endeavor to show to this witness what a good thing it would be for yourselves if it went through? A. I am quite sure we did not go into the matter at all. 3 4

Q. Was that matter discussed at all? A. No, not to my knowledge.

1 Q. "Q. In what way did they point out the benefits (p. 306, Vol. I)? A. The License Company formation and the contract as proposed." Did you or either Mr. Selig or Mr. Kleine point out any benefits to Mr. Swanson to be derived from the formation of the Patents Company? A. Not to my knowledge, and I don't think we did.

2 Q. "Q. In what way would it benefit them? A. It would benefit them in having control of the business, and shut out competition" (p. 306). Did you or either of you state on that occasion, in words or in substance, that it would benefit you in having control of the business and shut out competition? A. No, sir, we did not.

Q. In further response to the same question Mr. Swanson continues as follows: "I told the gentlemen there that I had already in my possession a copy of the proposed contract with the exchanges." Did Swanson tell you that? A. No, sir, he did not.

Q. Also, he says: "I also had a copy of another contract that they proposed putting out relative to projecting machines." Did he tell you that in words or in substance? A. He didn't tell me that; no, sir.

3 Q. Or was it said in your presence? A. I didn't hear it.

Q. His answer continues as follows: "This second contract never had been put out by the Patents Company, and they said if I was their friend, which I had presumably been for years, that I would work with them to help them put it over, as they thought well of the scheme, and it would unquestionably make them all rich, and would perhaps be personally beneficial to me." Was anything like that said? A. No, sir.

4 Q. And he continues: "—but they requested one particular favor, that I would make no speech regarding the matter whatever at the opening of the meeting of the Film Service Association. I gave them the promise that I would not make any speech on the matter, and did not." Did you or either of the other gentlemen in your presence make any such request of Mr. Swanson? A. I did not, and I didn't hear the other gentlemen do so.

Q. Mr. Swanson was also asked this question and gave this answer (p. 307): "Q. Was anything said about patents during this conversation at the Republican Club? A. They went over the ground, of course, that they had accumulated

all the available patents on projecting machines, and on cameras, and on films, that it was possible to get, and, that they had formed that into a holding company to be known as the Motion Picture Patents Company; that they had made arrangements with the Eastman Kodak Company to get the exclusive use of the Eastman stock, and that a competitor would have but very little chance entering the field, owing to the fact that they had all the patents on the various apparatus, and particularly the Eastman stock, the Eastman raw stock." What truth, if any, is there in that statement of Swanson's? A. I don't know that there is any truth in it.

Q. Was anything said about any arrangements with the Eastman Kodak Company? A. No, sir, there could not have been.

Q. Was anything said about the transfer of all the patents, or all the available patents on projecting machines, cameras, and films to the Motion Picture Patents Company? A. There was no discussion with Mr. Swanson along that line at all.

Q. Was Mr. Swanson's condition such as to make it possible for him to discuss these matters with you at that time?

Mr. GROSVENOR: I object to that question, it not having been shown that the witness' condition was such that he is qualified to express an opinion as to Mr. Swanson's condition.

Mr. KINGSLEY: That is always presumed in the absence of proof to the contrary.

By Mr. CALDWELL:

Q. You may answer the question? A. Please repeat the question.

The question was repeated to the witness as follows:

"Q. Was Mr. Swanson's condition such as to make it possible for him to discuss these matters with you at that time?"

A. No, his condition was not.

Q. He was also asked this question and made this answer (p. 307): "Q. State whether or not anything was said

1 about the purpose of combining all of these patents? A. The purpose of combining the patents was for the purpose of stopping future ruinous litigation among themselves and likewise for the purpose of controlling the business of making moving pictures and disposing of them." Was anything like that said about the purpose of this organization? A. No, sir.

Q. Was anything like that said about the purpose of this organization? A. No, sir.

2 Q. He was asked this question and gave this answer: "Q. Do you recall anything else that was said at the Republican Club during those two days? A. Nothing, except that Mr. Selig said that they—that he would not take five million dollars for his business, where he had been willing to take a half million two months before that." Did you hear Mr. Selig say that or anything like that? A. I did not.

3 Q. On his direct examination (p. 318), he was asked this question and gave the following answer: "Q. Did any other manufacturers, prior to this meeting in January, 1909, say anything, or give any intimation about the formation of the consolidation of interests? A. I had a criminal
4 action pending against a party in Chicago, who was also in the moving picture business, and Mr. Selig and Mr. Spoor and Mr. Kleine waited on me in my office on two different occasions, in an effort to try to persuade me to try to quit prosecuting this party, and stated at that time that they did not want any action or publicity of that nature, owing to the fact that they intended bringing about a condition in the very near future, that would elevate the business considerably, and that if I insisted on prosecuting, that it would act as a deterrent against me when matters of membership in this new proposition were to be considered. I refused to drop this prosecution, however, and after that time, they did not discuss matters openly with me. But that was the nearest reference that I know of as to the formation of the Patents Company up to the announcement of it." Do you recall calling on Mr. Swanson in January, 1909, in reference to any criminal prosecution that he had on hand? A. Yes, sir.

Q. Did you call on him on more than one occasion? A. Only this once.

Q. What truth, if any, is there in the statement of the witness, Swanson, that I just read to you? You

may state just what was said at that interview. A. Mr. Swanson had his brother arrested for stealing goods out of his exchange, and he indicted another Chicago exchange man by the name of Mr. Hopp, and the newspapers were full of it in Chicago, and particularly on account of the fact that Mr. Swanson was prosecuting his own brother, a lot of the Chicago film people around there suggested, or somebody suggested, that Mr. Kleine, Mr. Selig and myself, being manufacturers, see Mr. Swanson and ask him to ease up; that it was not such a serious matter after all, and not to prosecute his brother in that way, he being a member of his own family, and he indicted Hopp. He seemed like he was vindictive at Hopp, and he wanted to get back at Hopp through his brother; and we called on him and told him to ease up on it, or asked him if he would not, as a favor to us. That was all. That was all that happened. He didn't at the time, and at the time he continued the prosecution, but afterwards lost the case. That was all there was to that; it was in the newspapers and we wanted to take the odor out of the business in Chicago as it was conducted at that time. He was being referred to as a "film man" and the other man was a film man, because the film business looked pretty rotten.

Mr. GROSVENOR: Was this a criminal suit?

The Witness: Yes, sir, he had his brother arrested for stealing films and machines out of his store, and he blamed Mr. Hopp for his brother's actions, and he said that Mr. Hopp had influenced his brother to steal this stuff to sell it to him.

By Mr. CALDWELL:

Q. Did either you or the other gentlemen mentioned by him, urge, as a reason for his dropping the criminal prosecution, that you intended bringing about a condition in the very near future that would elevate the business considerably? A. No, we did not. We were only talking for Mr. Swanson's own good in regard to his brother.

Q. Did you say to Mr. Swanson, or did either of these other gentlemen say to him in your presence, that it would act as a deterrent against him when matters of

1 membership in the new proposition were to be considered, if he didn't drop that prosecution? A. I don't remember that any new proposition was at hand at that time. I remember calling on him in regard to that only, that is, in regard to having his brother arrested and locked up in the jail there. I did that at the solicitation of the Chicago Film exchange men, and in fact, I think Mr. Kleine and Mr. Selig were influenced by some exchange men in Chicago, who asked us to go there and see him. They stated it looked very bad.

2 Q. Was this Hopp that the witness Swanson refers to there, Joseph Hopp, who conducted a rental exchange in Chicago? A. Yes, sir, that was the man.

Q. Did you know of an exchange in Chicago called the "Globe Film Exchange?" A. Yes, sir, there was such an exchange.

Q. Who owned or operated that exchange? A. Why, either Miller or Baker. There were two exchanges, one called the "Globe" and one the "Royal." They were run by two men who were brothers but who had different names. You never could tell which was which, either, by
3 looking at them. One of them called himself "Baker" and the other called himself "Miller," but they were brothers nevertheless. I could not say which one of them owned that Globe exchange, whether it was Baker or Miller, but it was one of them.

Q. What was the character of those two exchanges? A. Not of the best, not considered of the best.

Mr. GROSVENOR: I object to that testimony, and move to strike it out as improper, this witness not being qualified to express an opinion.

4

By Mr. CALDWELL:

Q. You were in business in Chicago, and have been for many years? A. Yes, sir.

Q. Both as an exchange man and as a producer? A. Yes, sir.

Q. And did you know what the reputation of those two exchanges was in that community? A. Yes, sir, I did.

Q. Do you know whether they were guilty of what is known as "duping?" A. They were. They had a place

for making titles, and they also copied films. I was called on at one time by Mr. John Hardin, the agent of the Edison Company, to go down to his place and look at a copy of an Edison film—he thought it was a dupe—and to pass on it. I did so, together with Mr. Rock and some other men, and it really was a dupe, and the dupe had been made by Baker or Miller of the Globe Film Exchange, in their title place.

1

Q. Did you know, also, of an exchange operated in Chicago in 1908 and 1909, called the "Chicago Film Exchange?" A. Yes, sir.

2

Q. Who was the owner or operator of that exchange? A. Max Lewis was one of the owners.

Q. Did you know what reputation that exchange had in Chicago? A. They also conducted a duping plant in a building next door to their offices, to their exchange offices.

Q. Was or was not that considered a disreputable practice in the business? A. Yes, it was.

Q. Then from your knowledge of these three exchanges would you say they were reputable or disreputable? A. I would say they were disreputable from that.

Q. Did you know anything about the financial status of those exchanges, or either of them? Was it good or bad? A. It was not good.

3

Q. Do you happen to know whether either of those exchanges was subsequently licensed by the Motion Picture Patents Company? A. I believe not. I believe they were not.

Q. Do you recall whether, the night that Swanson spent at the Republican Club, to which reference has just been had, was the night preceding the convention of the F. S. A. at the Imperial Hotel? A. No, there had been a convention during that day, and they were going to, I guess, have another meeting the next morning, of some kind, but they had had their convention that very day.

4

Whereupon, at 11:40 o'clock A. M., March 10th, 1914, the hearings were adjourned until 10:30 o'clock A. M., March 11th, 1914, to be resumed at Room 159, Manhattan Hotel, New York City.

1

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

2

UNITED STATES OF AMERICA,
Petitioner,

v.

MOTION PICTURE PATENTS Co. and others.
Defendants.

No. 889.

Sept. Sess., 1912.

NEW YORK CITY, March 11th, 1914.

The hearings were resumed pursuant to adjournment, at Room 159, Manhattan Hotel, New York City, at 10:30 o'clock A. M., March 11th, 1914.

3

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

CHARLES F. KINGSLEY, Esq., GEORGE R. WILLIS, Esq., and FRED R. WILLIAMS, Esq., appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin, Armat Moving Picture Company, Melies Manufacturing Co. and Gaston Melies.

J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

4

HENRY MELVILLE, Esq., attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

JAMES J. ALLEN, Esq., appearing for Vitagraph Company of America, and Albert E. Smith.

Hon. R. O. MOON, appearing for Siegmund Lubin.

Thereupon H. M. NEWSOME, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows: 1

Direct examination by Mr. CALDWELL:

Q. Where do you live? A. Birmingham, Alabama.

Q. And in what business are you engaged? A. I am in the moving picture business.

Q. What branch of the moving picture business? A. As an exhibitor.

Q. And in what business were you engaged in the year 1909, and in the year 1910? A. Well, I was in the film renting business, and also the exhibiting business. 2

Q. What was the name of your film rental exchange? A. The Birmingham Film Supply Company.

Q. And was that a corporation? A. Yes, sir.

Q. Organized under the laws of Alabama? A. Organized under the laws of Alabama.

Q. What was your connection with that corporation? A. President of the concern.

Q. To what extent were you the owner of the stock? A. I practically owned it all. 3

Q. When did that concern start in the film rental business in Birmingham, Alabama? A. In June, 1909. I bought the business in June, 1909.

Q. From whom did you buy the business? A. George Kleine.

Q. Do you mean by that, that you bought an exchange formerly conducted in Birmingham by George Kleine? A. Yes, sir.

Q. Do you recall the name of the exchange? A. I believe it was the Kleine Optical Company, operated as the Kleine Optical Company—by George Kleine, of Chicago, whatever the name of his concern was. It was the Kleine Optical Company, I am quite sure. 4

Q. After you bought that exchange did you apply to the Patents Company for a license? A. Yes, sir.

Q. Did you obtain it? A. Yes, sir.

Q. About when? A. I applied in June, and got a license right away.

Q. What other exchanges were you competing with, if

1 any, in Birmingham, at that time? A. One other exchange, the Theatre Film Supply Company.

Q. Was that a licensed exchange? A. Yes, sir.

Q. Who were the principal owners of that exchange? A. Boone & Bailey.

Q. You may state, if you will, what the character of the competition was between you and the Theatre Film Supply Company? A. Well, the competition was pretty keen.

2 Q. What do you mean by "pretty keen?" A. Well, there was not a great deal of film rental business in that territory, and two exchanges were too much.

Q. State what each of you did in order to get business? A. Well, we cut and slashed prices and took each other's customers at most any price we could get them at.

Q. How long did that state of affairs continue as between these two exchanges? A. Well, I believe until November or December of that year.

Q. What happened then? A. Why, we consolidated in a way, the two exchanges did.

3 Q. Explain in what way you did consolidate? A. Well, we organized a holding company, and transferred the stock of the two exchanges to the holding company.

Q. What was the name of the company? A. The Southern Amusement & Supply Company.

Q. And did you, as owner of substantially all of the stock of your exchange, exchange that stock for stock in the Southern Amusement & Supply Company? A. Yes, sir.

Q. And did Messrs. Bailey & Boone, who owned the stock of the Theatre Film Supply Company, do the same thing? A. Did likewise, yes, sir.

4 Q. Did you have the control or majority of the stock? A. No, sir.

Q. How was the control of the Southern Amusement & Supply Company divided then, equally? A. No, the parties owning the Theatre Film Supply Company got the majority of the stock.

Q. Now, what happened after this consolidation, so far as competition between the two exchanges was concerned?

A. There still existed a certain amount of competition, but, of course, it was not as keen as it was prior to that.

Q. Was any agreement entered into between the two companies? A. That we would not cut prices.

Q. You did agree you would not cut prices? A. Yes, 1
sir.

Q. And the prices which had already been cut below the normal, were they restored to their former level after the consolidation? A. Probably in some cases, not in every case.

Q. Then the only competition between the two companies after the consolidation consisted of the getting of new business? A. Yes, sir, and the independent business.

Q. Was it known, outside of the parties immediately interested, that there had been a consolidation? A. No. 2

Q. Did you make any effort to keep that secret? A. Yes, sir. All we had to do was to keep our mouths shut.

Q. Did you have any competition from any other licensed exchange? A. Yes, sir.

Q. What exchange was that? A. Mitchell of Memphis, and Pierce of New Orleans.

Q. From which one of those two sources was the competition the strongest, New Orleans or Memphis? A. I believe Memphis was the strongest, and we also had the independent exchanges to compete with.

Q. What was the name of the Memphis exchange? A. 3
The Mitchell Film Exchange, I believe, is the way he operated it.

Q. And was that exchange owned or operated by a man by the name of Mitchell? A. Yes, sir.

Q. What did that exchange do in your territory either before or after your consolidation in the way of competition with you? A. Before and after, Mitchell cut the prices. He even came into Birmingham, and got business, and put his whole output in one theatre there. He was buying the licensed output, or reels, and he came into Birmingham and got a customer there, and put his whole out- 4
put in one theatre.

Q. The Mitchell exchange was subsequently sold to the General Film Company, was it not? A. Yes, sir.

Q. Do you recall about the time of the sale? A. I think it was in August, 1910.

Q. This price cutting that you have just spoken of on the part of the Mitchell Film Exchange, was that before or after the sale to the General Film Company? A. It was before.

1 Q. Before? A. Yes, sir.

Q. Do you know a man named Acton R. Boone? A. Yes, sir.

Q. Is he the Boone of the firm of Bailey & Boone, you just referred to? A. Yes, sir.

Q. As owning the Theatre Film Supply Company? A. Yes, sir.

Q. I want to read you some questions that were asked of Mr. Boone when he was called as a witness by the Government in this case, and the answers which he gave to those questions, found at page 1206, Vol. II, of the record:

2 "Q. What became of the Mitchell Company of Memphis, Tennessee? A. It sold to the General Film Company. Q.

About what time was that, approximately? A. I judge that that was about the middle weeks of August. During the first of August. From the first to the 20th, perhaps.

Q. What effect, if any, did the entrance of the General Film Company into the business of the film rental exchanges have upon the business of your company? A. The competition immediately became very severe. Mitchell, who was the former owner of the business, was made

3 manager by the General Film Company, and he at once engaged one of our managers who was conversant with our customers, what they paid on the films that they received, and he was instructed by Mitchell to go into our territory. Q. Tell us what this manager whom Mitchell hired did do? A. He went over our territory and cut prices in many cases as much as fifty per cent. of what we were receiving from those customers, with the result

4 that we lost these customers to the General Film Company, and our rentals from the territory from that covered by him, were at once reduced very materially. Eventually the rentals, the reduction in those rentals by cutting the price, brought us down to about the actual cost of operating of the exchange and buying of films; in other words, we were close to a losing basis. Q. Did you come thereafter to New York, having in mind the subject of selling out your business? A. Yes, I came for the second time."

Now, this price cutting, which you have just testified to, occurred before the sale to the General Film Company? A. Yes, sir, Mitchell is the man who cut the price before he sold to the General Film Company.

Q. Did the General Film Company, after buying the Mitchell Film Exchange, enter the Birmingham territory and cut prices as much as fifty per cent.? A. They were already there, but they never did get but this one customer.

Q. And that was before the sale? A. Yes, sir, and they had their whole output in this one theatre, but there were not as many reels then as there is now.

Q. Do you know whether or not there was any price cutting by the General Film Company, after it purchased the Mitchell exchange? A. No, sir, I didn't hear of any.

Q. Up to the time of the consolidation of the Birmingham Film Exchange and the Theatre Film & Supply Company, had your exchange been making any money? A. No, sir, it had been losing.

Q. How long did you continue to operate your exchange after this consolidation? A. You mean until we sold it?

Q. Yes? A. We consolidated in November or December of 1909, and we sold in September of 1910, nearly a year.

Q. Did you make any money after the consolidation? A. We made some money.

Q. Did you consider the business very profitable? A. No, sir.

Q. What happened in September of 1910, with respect to your exchange? A. My company?

Q. Yes. A. I sold out to the General Film Company.

Q. Who started the negotiations for that sale? A. I did.

Q. State what you did? A. I came to New York to see them in regard to selling out to them.

Q. Was that pursuant to any previous appointment that had been made by letter or telegraph? A. No, sir, that was the first move.

Q. You may state whom you saw about the sale. A. I went into their office in New York.

Q. Who do you mean by "their office"? A. The General Film Company's, and I believe I first met Mr. Percy Waters, and told him my business, and he sent for Mr. Kennedy and Mr. Kennedy was in the building, and he came out and I met him and told him my business. I told him that I had come up to see him about selling my exchange. He says, "Well, I don't know that we want to buy any more exchanges," or "any exchange," probably he said, "right now." And we talked along and discussed

1 the matter for a few moments, and he finally says: "What price have you got on it?" and I told him I had not put any price on it, that I wanted to get a proposition from him, and he asked me how many reels I was buying, and how many royalties I was paying, etc., and he went back into his private office for a few minutes and came back and made me a proposition to buy the exchange.

Q. What was the proposition he made you? A. Do you mean the figures?

Q. Yes. A. Fourteen thousand dollars.

2 Q. How was that payable? A. In his first proposition he said so much stock in the General Film Company, and so much cash.

Q. Do you remember how much stock and cash? A. Four thousand dollars of stock, and ten thousand dollars of cash.

Q. Did you accept that price? A. Yes, sir, I did.

Q. Did you discuss it any further after it was made? A. Yes, sir, I asked him another question or two. I asked him: "Do I have to take this stock?" and I said, "Is it compulsory?" and he said, "No, take all cash if you want it."

3 Q. And what did you do after having that alternative? A. I told him I would take the four thousand dollars of stock and ten thousand in cash.

Q. Were you satisfied with the price that was offered you? A. Perfectly.

Q. Had you wanted to sell your business before that? A. Yes, I would have sold it most any time because the business was not profitable.

Q. Was the sale entirely voluntary? A. Entirely so.

4 Q. Did you know at that time that there was a clause in your exchange license agreement permitting the Patents Company to cancel your license on fourteen days' notice without cause? A. Well, I presume I did. It was in there, and I presume I knew it.

Q. Did that operate on your mind in any way in determining the question of whether you would or would not sell? A. No, sir, because I never had heard of any license being cancelled except for the breaking of certain agreements. I never heard of any license being cancelled without a cause.

Q. No threats whatever were made to you that if you

did not sell, the General Film Company would by means of its great resources put you out of business through its competition? A. That question was not raised at all

Q. Was there any agreement made that you should continue in the employ of the General Film Company, as manager? A. No, sir, nothing said about it.

Q. Or any agreement that you should not remain in the film business or continue in the business? A. No, sir.

Q. Do you know whether or not there was available a sufficient supply of unlicensed film to enable you to continue in the business of a rental exchange? A. Yes, sir.

Q. If you had so desired? A. Yes, sir, there was.

Q. And how did you happen to know that? A. My manager had suggested that we go over to the independents.

Q. How long before had he suggested that? A. It was that year, some time during that year. He had taken it upon himself to write some of the independent manufacturers and asked them if we could buy their products at that point, and they replied, saying we could.

Q. Did your manager want to change the service? A. Yes, sir, he wanted to go over to the independents.

Q. Have the different payments on your contract with the General Film Company been promptly met as they became due? A. Yes, sir.

Q. Have you received the dividends on your stock? A. Promptly.

Q. Did you have a conversation with Mr. Boone and Mr. Bailey after their return to Birmingham, from New York, and after they had sold their exchange to the General Film Company? A. Yes.

Q. On the subject of the price? A. Yes, sir.

Q. What did Mr. Boone say to you? A. In regard to the price?

Q. Yes. A. He told me that he had sold and also told me the price.

Q. What did he say about the price? Did he say whether or not it was satisfactory? A. Yes, he said the price was satisfactory. He said it was more than he had expected to get.

Q. Did you have a conversation with Mr. Bailey? A. We all discussed it at the same time, Bailey, Boone, and myself.

Q. What did Bailey say? A. He seemed to be of the same opinion. He was tickled to death with the sale.

- 1 Q. Did you happen to know whether Messrs. Boone & Bailey wanted to sell their exchange some time before they actually made the trade? A. Did I know about that?
Q. Yes. A. No, sir, I don't believe I did.
Q. You never had any conversation with them on that subject? A. No, sir.
Q. You are in the exhibition business now, are you not?
A. Yes, sir.
Q. How many theatres do you own, or are you interested in? A. Six.
- 2 Q. Where are those theatres located? A. Birmingham, Pensacola, Florida, and Augusta, Georgia.
Q. How many motion picture theatres are there in Birmingham? A. There are about ten all told.
Q. Do you know how many of those are licensed and how many are unlicensed? A. Only three licensed.
Q. And the other seven are unlicensed? A. Yes, sir.
Q. Are you familiar with conditions in Augusta, Georgia?
A. Yes, sir.
Q. How many theatres are there in Augusta? A. There
- 3 are only three picture shows there, picture theatres.
Q. What is the character of those theatres as to the service furnished? A. Two licensed, and one unlicensed.
Q. Are you familiar with the conditions in Pensacola, Florida? A. Yes, sir.
Q. What are the conditions there with respect to licensed and unlicensed theatres? A. One licensed, and three unlicensed.
Q. Are you familiar with the conditions in Montgomery, Alabama? A. Yes, sir.
Q. What are the conditions there? A. Two unlicensed, and one licensed.
- 4 Q. Are you familiar with the motion picture theatres in Mobile, Alabama? A. No, sir; I am not very well acquainted there.
Q. Are you in Gadsden, Alabama? A. Yes, sir.
Q. What is the condition there? A. I think, two unlicensed and one licensed, if I am correct.
Q. How about Anniston, Alabama? A. Three unlicensed, and one licensed.
Q. And in Chattanooga, Tennessee? A. Three licensed, and four unlicensed.

Q. And in Memphis, Tennessee? A. Four licensed, and five unlicensed. 1

Q. Did you regard the film rental business in the year 1910 as a stable business? A. The business was a gamble, more or less.

Q. Did you feel relieved after you made the sale to the General Film Company? A. Yes, sir, very much.

Q. You felt as if you were getting a burden off your hands? A. Yes, sir.

Cross examination by Mr. GROSVENOR:

Q. How much did you pay Kleine for your business, in 1909? A. Ten thousand dollars. 2

Q. And when you sold it a year later, you got how much? A. Fourteen thousand dollars.

Q. Had you taken something out as profits in the meantime? A. No, sir; the business was losing money.

Q. Had you drawn a salary? A. No, sir.

Q. What percentage of the business done by you in the year or two that you ran the rental exchange was made up of the receipts for renting films? A. What percentage? 3

Q. Yes. A. I don't quite understand.

Q. What did your business consist of? A. What did the business consist of?

Q. Yes. A. The exchange business?

Q. I am talking about your business, Mr. Newsome. A. Suppose you ask that question again.

Q. How much were your weekly receipts? A. Well, it fluctuated.

Q. Well, give the limits? A. That would be pretty hard for me to remember that far back; that has been three or four years. 4

Q. What made up your weekly receipts? Can you tell that? A. The film rentals.

Q. Made up mostly of film rentals? A. Nearly all film rentals. We handled machines and supplies.

Q. What per cent. of the total business which you did, approximately, consisted of these film rentals? A. The biggest part of the business was the film rental.

Q. Ninety-five per cent.? A. Ninety per cent. at least, I should think, yes, sir.

Q. Those film rentals were paid for the films which you

1 sent out from your place of business to theatres located in the various cities? A. Yes, sir.

Q. Did you send these films out from Birmingham to cities outside of Alabama? A. Yes, sir.

Q. Please name some of the cities? A. Well, we sent some to Atlanta, Georgia.

Q. Name the States. A. Just the States?

Q. Yes. A. We covered three or four adjoining States—Tennessee, Mississippi, Georgia, and some in Louisiana.

Q. You say that before naming a price, Kennedy went into his private office? A. Yes, sir.

2 Q. When he came back, did he bring any papers? A. No, sir.

Q. But just named the figure to you? A. Yes, sir.

Q. He named no figure until he went into his private office? A. No, sir. Well, I suppose he went into his private office. He went out of the office we were in, and I suppose he went into his private office.

Q. Did he state whether or not he had consulted any papers or memorandum? A. No, sir.

3 Q. You say your manager wanted you to use the independent service? A. Yes, sir.

Q. He didn't own the business? A. No, sir; he had no interest in it.

Q. And you, as the owner of the business, decided not to use the independent service? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. What service do these six theatres that you own, use? A. Now?

Q. Yes. A. Licensed pictures.

Q. They are all licensed theatres? A. Yes, sir.

4 Q. And how long have they been licensed theatres? A. Always have been licensed.

Q. You felt it was more profitable to display the licensed pictures than the independent pictures? A. Yes, sir.

Q. And in your judgment, the licensed pictures enabled you to make your business a more profitable and successful business? A. Yes, sir.

Q. That is the reason you have displayed them? A. That is the principal reason, yes, sir.

Q. Now, these six theatres you own are among the larger theatres in the towns in which they are located? A. Yes,

sir; they are the best theatres in the towns where they are located. 1

Q. Is there any man in your vicinity, that is, in your towns, doing an exhibition business that is as successful as yours, that is to say, who owns six theatres, large theatres? A. No, sir; there is nobody else in the towns where I am that has six theatres.

Thereupon, ANNA S. MATTHEWS, being recalled for further direct examination, deposed: 2

Direct examination continued by Mr. KINGSLEY:

Q. I show Defendants' Exhibit No. 148, containing list of the cities, towns and villages in Georgia checked by W. W. R. Greene, in December, 1913, with reference to the motion picture theatres. Do you know if these towns are all included in the territory of any exchange manager? A. Yes, sir.

Q. What exchange manager? A. William C. Brandon.

Q. Have you compared the result of Mr. Greene's checking with the checking of July, 1913, carried out under your supervision and direction, at the office of the Motion Picture Patents Company? A. Yes. 3

Q. Have you checked the identical figures shown in Defendants' Exhibit No. 148 against your office list? A. Yes, sir.

Q. How does Mr. Greene's checking compare with that checking of those towns shown in Defendants' Exhibit 148? A. It shows a slight decrease. Mr. Greene reports one hundred and three theatres exhibiting motion pictures, and according to our records there were one hundred and eleven. 4

Q. Have you made an estimate based on the result of Mr. Greene's checking as to the number of moving picture theatres in the territory covered by the Atlanta Exchange, and its branches, of which William C. Brandon is the manager? A. Yes, sir.

Q. William C. Brandon testified in this case, at page 2386, Vol. IV, that there were six hundred and twenty motion picture houses in the territory served by the Atlanta branch of the General Film Company, and its branches, of which he is manager. How does that number compare with

1 the theatres on the list covering the same territory kept under your supervision and direction at the office of the Motion Picture Patents Company, and revised in July, 1913? A. The list revised July, 1913, showed nine hundred and fifty-one theatres exhibiting motion pictures in this territory.

Q. Upon the basis of the checking made by Mr. Greene, how many moving picture theatres would there be in the territory covered by the exchange and its branches of which William C. Brandon is the manager? A. Eight hundred and eighty-four.

2 Q. In making up this comparison, did you confine yourself to the towns in the State of Georgia, State of Alabama, with the exception of Mobile, the State of Florida, with the exception of Tallahassee and Pensacola, North and South Carolina, Tennessee, Arkansas, and the northern part of Mississippi and a small portion of Kentucky, being exactly the territory served by the Atlanta branch of the General Film Company and its branches? A. Yes, sir, with the exception of in Mississippi and Kentucky we noted on the map all towns in which these exchanges had reported theatres using their service, and we included only those
3 towns within the boundary of the towns reported by the exchanges.

Q. You mean the boundary of the towns reported, or the boundary of the territory reported? A. Well, in getting at the territory we took the towns and drew the territory from one town in which they had reported a licensed exhibitor to another town, including all towns within that territory.

Q. Were you careful to confine the comparison to exactly the territory covered by the Atlanta branch of the General Film Company? A. Yes, sir, and its branches.

4 Q. And its branches? A. Yes, sir.

Q. How many motion picture theatres are there in this territory, designated by the reports kept under your care and supervision, revised July, 1913? A. Nine hundred and fifty-one.

Q. Comparing the result of your checking of the cities, towns and villages, of July, 1913, shown on Defendants' Exhibit 148, with the result of Mr. Greene's checking in December, 1913, what difference is shown? A. A decrease of eight theatres exhibiting motion pictures.

Q. If the same ratio of difference exists in all of the territory covered by the service of the Atlanta branch of the General Film Company, and its two branches, what would be the number of motion picture theatres therein?

A. Eight hundred and eighty-four.

Q. What was the percentage of decrease shown by Greene's checking in Georgia in comparison with yours?

A. About seven per cent. decrease.

Q. I show you Defendants' Exhibit No. 150, containing a list of the cities, towns and villages in Ohio, checked by W. W. R. Greene, in January, 1914, with reference to motion picture theatres. Have you compared the result of Mr. Greene's checking with the checking of July, 1913, carried out under your supervision and direction at the office of the Motion Picture Patents Company? A. Yes, sir.

Q. Have you checked the identical towns shown in Defendants' Exhibit 150 against your office list? A. Yes, sir.

Q. How does Mr. Greene's checking compare with your checking of these figures shown in Defendants' Exhibit 150? A. According to Mr. Greene's checking there were two hundred and twenty-two theatres exhibiting motion pictures, and according to the July checking there were only two hundred and twenty-one.

Q. What is the percentage of increase shown by Mr. Greene's checking in Ohio, in comparison with your checking made in July, 1913? A. One-half of one per cent. increase.

Q. Have you prepared a statement showing an analysis of the difference between July and December, 1913, in the checking of towns in Georgia, investigated by W. W. R. Greene? A. Yes, sir.

Q. Have you it with you? A. Yes, sir.

Q. Did you prepare this yourself? A. Yes, I prepared it.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: I object to it as unintelligible.

The paper produced by the witness and offered in evidence by counsel for defendants is marked by the Examiner, "Defendants' Exhibit No. 151," and is as follows:

1

Defendants' Exhibit No. 151.**ANALYSIS OF DIFFERENCE BETWEEN JULY AND
DECEMBER, 1913, CHECKING OF TOWNS IN
GEORGIA INVESTIGATED BY W. W. R. GREENE.**

Number of towns with theatres that Greene visited	64
Number of towns without theatres that Greene 'phoned or inquired about, or visited.....	102
Number of theatres reported active July, 1913, as per mail checking.....	111
Number of theatres reported active December, 1913, as per visits of Greene.....	103
Difference between July and December, 1913...	8 or 7% loss.
Number of new theatres (active) reported by Greene, of which the M. P. P. Co. had no record	10

By Mr. KINGSLEY:

3

Q. Have you made an analysis of the difference between the July, 1913, checking, and the January, 1914, checking of towns in Ohio investigated by W. W. R. Greene? A. Yes, sir.

Q. Have you it with you? A. Yes, sir.

Q. Is this it? A. Yes, sir.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: This list shows that there was one more theatre in January, 1914, according to Greene, than there were shown in your estimate of July, 1913?

4

The Witness: Yes, sir, one active theatre.

Mr. GROSVENOR: That is, his total practically agrees with your total?

The Witness: Yes, sir.

Mr. GROSVENOR: You state on this exhibit, Miss Matthews, that Greene found twelve new theatres?

The Witness: He found twelve new theatres, but some

theatres which were active in the July checking were closed 1
in January.

Mr. GROSVENOR: So that, whereas he found
twelve new theatres, he also found eleven dead ones?

The Witness: Not dead exactly, but closed temporarily.

Mr. GROSVENOR: Then I object to this exhibit
(152) as misleading, and as incomplete, showing
upon its face the number of new theatres discovered 2
by Greene, and not showing the number that had
been closed, and, therefore, an attempt to show an
increase in the business, whereas, as a matter of
fact, there had been none, owing to the closing of
the eleven theatres, and I make the same objection to
Defendants' Exhibit No. 151.

The paper produced by the witness and offered
in evidence by counsel for the defendants, is marked
by the Examiner, "Defendants' Exhibit No. 152," and
is as follows:

Defendants' Exhibit No. 152.

3

**ANALYSIS OF DIFFERENCE BETWEEN JULY, 1913,
AND JANUARY, 1914, CHECKING OF TOWNS IN
OHIO INVESTIGATED BY W. W. R. GREENE.**

Number of towns with theatres that Greene visited	98	
Number of towns without theatres that Greene 'phoned or inquired about or visited.....	68	
Number of theatres reported active July, 1913, as per mail checking.....	221	4
Number of theatres reported active January, 1914, as per visits of Greene	222	
Difference between July and January.....	1 or 1½%	
	gain.	
Number of new theatres (active) reported by Greene of which the M. P. P. Co. had no record	12	

1 By Mr. KINGSLEY:

Q. Have you made an analysis of the difference between the number of theatres testified to by William C. Brandon, on December 10th, 1913, existing in the territory served by the Atlanta Exchange, and its two branches, and the number of theatres existing in the same territory, according to the mail checking of July, 1913, and adjusted to December, 1913, in accordance with the per cent. arrived at as a result of the December, 1913, checking in Georgia, by W. W. R. Greene? A. Yes, sir.

2 Q. Is the paper which I show you a statement of that analysis? A. Yes, sir, it is.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: I reserve the right to enter further objection after I have had opportunity to examine the exhibit and to cross examine the witness.

The paper offered in evidence by defendants' counsel is marked by the Examiner, "Defendants' Exhibit No. 153," and is as follows:

3 **Defendants' Exhibit No. 153.**

Analysis of Difference Between the Number of Theatres
Testified by WILLIAM C. BRANDON, on December
10, 1913, as Existing in Territory of the States of
GEORGIA, ALABAMA, With the Exception of MO-
BILE, FLORIDA, With the Exception of TALLAHAS-
SEE AND PENSACOLA, NORTH AND SOUTH
CAROLINA, TENNESSEE, ARKANSAS, the North-
ern Part of MISSISSIPPI, and a Small Portion of
KENTUCKY, and Served by the GENERAL FILM
COMPANY, of ATLANTA, GEORGIA, and Sub-
branches at MEMPHIS, TENN., and JACKSON-
VILLE, FLORIDA, and the Number of Theatres Exist-
ing in the Same Territory According to the Mail
Checking of July, 1913, and Adjusted to December,
1913, in Accordance With the Percentage Arrived at
as the Results of the December, 1913, Checking in
Georgia, by W. W. R. Greene.

4

Number of theatres reported active July, 1913, as per mail checking.....	951	1
Less 7%.....	67	

Number of theatres estimated to be in existence December, 1913, on the basis of the Georgia checking made by W. W. R. Greene.....	884
Number of theatres testified by William C. Brandon..	620

Number of theatres estimated to exist in excess of William C. Brandon's testimony.....	264	2
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By Mr. KINGSLEY:

Q. On the occasion of your first examination on February 24th, 1914, you furnished a statement which had been compiled under your supervision and direction, showing the number of places in the United States in which motion pictures were exhibited as of July 21st, 1913, and which is in evidence, marked "Defendants' Exhibit No. 144." Did you also, in the course of your duty, prepare statements covering the same territory in respect to motion picture houses as of October 31st, 1910, as of January 30th, 1911, as of July 3rd, 1911, as of December 18th, 1911, and as of July 7th, 1912? A. Yes, sir.

Q. Were these statements accurately made from the lists in your possession, which you had revised from time to time by following the investigating processes which you have described in your direct examination? A. Yes, sir.

Q. I show you five tabular statements, purporting to show the number of motion picture houses in the United States, and bearing the dates mentioned in the preceding question. Do you identify them as the statements to which you have referred? A. Yes, sir.

Q. Were these tables made up under your supervision and direction from the original reports in the books to which you have referred? A. Similar statements to these were made up.

Q. Are they correct transcripts of those statements so far as the totals of motion picture houses in the United States are concerned? A. Yes, sir.

- 1 The five papers produced by the witness and offered in evidence by counsel for the defendants are marked by the Examiner respectively, "Defendants' Exhibit No. 154," "Defendants' Exhibit No. 155," "Defendants' Exhibit No. 156," "Defendants' Exhibit No. 157" and "Defendants' Exhibit No. 158," and are respectively as follows:

Defendants' Exhibit No. 154.

- 2 STATEMENT AS OF OCTOBER 31, 1910, SHOWING
NUMBER OF PLACES IN THE UNITED STATES
IN WHICH MOTION PICTURES WERE EXHIB-
ITED.

(Separated as to Licensees and Non-licensees of the Motion Picture Patents Company.)

	State	Non-		Total	Differences
		Licensees	Licensees		
	Maine	30	43	73	13
	New Hampshire	33	15	48	18—
3	Vermont	30	22	52	8—
	Massachusetts	167	91	258	76—
	Rhode Island	21	13	34	8—
	Connecticut	62	35	97	27—
	New York	637	371	1008	266—
	New Jersey	170	125	295	45—
	Pennsylvania	689	360	1049	329—
	Delaware	14	4	18	10—
	Dist. of Col.	42	31	73	11—
	Maryland	82	58	140	24—
	Virginia	50	35	85	15—
4	West Virginia	59	37	96	22—
	Ohio	469	320	789	149—
	Indiana	224	203	427	21—
	Illinois	386	401	787	15
	Kentucky	50	71	121	21
	Michigan	174	171	345	3—
	Minnesota	87	73	160	14—
	Wisconsin	42	170	212	128
	North Dakota	19	18	37	1—
	South Dakota	15	27	42	12

1

State	Licenses	Non-Licenses	Total	Differences
Iowa	148	117	265	31—
Nebraska	74	54	128	20—
Missouri	181	276	457	95
Kansas	108	119	227	11
North Carolina	27	30	57	3
South Carolina	13	12	25	1—
Tennessee	28	30	58	2
Georgia	31	38	69	7
Florida	28	24	52	4—
Alabama	29	20	49	9—
Mississippi	17	34	51	17
Louisiana	49	62	111	13
Oklahoma	75	99	174	24
Arkansas	39	43	82	4
Texas	94	128	222	34
New Mexico	12	16	28	4
Colorado	84	61	145	23—
Wyoming	16	10	26	6—
Montana	33	23	56	10—
Arizona	23	13	36	10—
Utah	38	22	60	16—
Nevada	14	13	27	1—
Idaho	50	24	74	26—
California	307	129	436	178—
Oregon	105	49	154	56—
Washington	106	59	165	47—
	5281	4199	9480	—1082

4

1

Defendants' Exhibit No. 155.STATEMENT AS OF JANUARY 30, 1911, SHOWING
NUMBER OF PLACES IN THE UNITED STATES
IN WHICH MOTION PICTURES WERE EXHIB-
ITED.(Separated as to Licensees and Non-licensees of the Motion
Picture Patents Company.)

	State	Licensees	Non- Licensees	Total	Differences
2	Maine	42	36	78	6—
	New Hampshire	33	25	58	8—
	Vermont	29	28	57	1—
	Massachusetts	181	108	289	73—
	Rhode Island	21	22	43	1
	Connecticut	76	40	116	36—
	New York	662	447	1109	215—
	New Jersey	170	130	300	40—
	Pennsylvania	633	436	1069	197—
	Delaware	9	9	18	
3	Dist. of Columbia	36	29	65	7—
	Maryland	78	79	157	1
	Virginia	49	48	97	1—
	West Virginia	55	51	106	4—
	Ohio	485	332	817	153—
	Indiana	215	230	445	15
	Illinois	392	439	831	47
	Kentucky	42	64	106	22
	Michigan	153	198	351	45
	Minnesota	98	90	188	8—
	Wisconsin	64	170	234	106
4	North Dakota	22	13	35	9—
	South Dakota	13	38	51	25
	Iowa	146	124	270	22—
	Nebraska	79	63	142	16—
	Missouri	201	230	431	29
	Kansas	111	141	252	30
	North Carolina	23	38	61	15
	South Carolina	12	17	29	5
	Tennessee	31	32	63	1
	Georgia	32	31	63	1—

State	Non-		Total	Differences	
	Licenses	Licenses			
Florida	35	34	69	1—	1
Alabama	25	21	46	4—	
Mississippi	22	24	46	2	2
Louisiana	54	54	108		
Oklahoma	79	123	202	44	2
Arkansas	30	53	83	23	
Texas	80	177	257	97	2
New Mexico	15	16	31	1	
Colorado	75	72	147	3—	2
Wyoming	18	15	33	3—	
Montana	31	28	59	3—	2
Arizona	19	15	34	4—	
Utah	50	29	79	21—	2
Nevada	12	11	23	1—	
Idaho	38	38	76		2
California	333	169	502	164—	
Oregon	110	63	173	47—	2
Washington	101	90	191	11—	
Total	5320	4770	10090	550—	8

1

Defendants' Exhibit No. 156.

**STATEMENT AS OF JULY 3, 1911, SHOWING
NUMBER OF PLACES IN THE UNITED STATES
IN WHICH MOTION PICTURES WERE EXHIB-
ITED.**

(Separated as to Licensees and Non-licensees of the Motion
Picture Patents Company.)

2	State	Non-		Total	Differences
		Licensees	Licensees		
	Maine	50	31	81	19—
	New Hampshire	29	23	52	6—
	Vermont	36	24	60	12—
	Massachusetts	169	124	293	45—
	Rhode Island	22	15	37	7—
	Connecticut	69	49	118	20—
	New York	714	545	1259	169—
	New Jersey	191	189	380	2—
	Pennsylvania	559	507	1066	52—
3	Delaware	9	15	24	6
	Dist. of Col.	36	38	74	2
	Maryland	59	92	151	33
	Virginia	53	58	111	5
	West Virginia	63	49	112	14—
	Ohio	425	453	878	28
	Indiana	200	280	480	80
	Illinois	380	478	858	98
	Kentucky	56	89	145	33
	Michigan	149	216	365	67
	Minnesota	94	84	178	10—
	Wisconsin	68	165	233	97
4	North Dakota	18	20	38	2
	South Dakota	19	34	53	15
	Iowa	114	190	304	76
	Nebraska	75	85	160	10
	Missouri	220	226	446	6
	Kansas	100	151	251	51
	North Carolina	35	44	79	9
	South Carolina	17	20	37	3
	Tennessee	40	31	71	9—
	Georgia	39	47	86	8

State	Licensees	Non- Licensees	Total	Differences	1
Florida	28	40	68	12	
Alabama	29	30	59	1	
Mississippi	28	23	51	5—	
Louisiana	57	53	110	4—	
Oklahoma	78	128	206	50	
Arkansas	32	61	93	29	
Texas	70	206	276	136	
New Mexico	13	16	29	3	
Colorado	75	80	155	5	2
Wyoming	18	16	34	2—	
Montana	34	32	66	2—	
Arizona	23	18	41	5—	
Utah	45	36	81	9—	
Nevada	21	7	28	14—	
Idaho	42	33	75	9—	
California	384	173	557	211—	
Oregon	127	64	191	63—	
Washington	121	101	222	20—	
Total	5333	5489	10822	156	3

1

Defendants' Exhibit No. 157.

STATEMENT AS OF DECEMBER 18, 1911, SHOWING
NUMBER OF PLACES IN THE UNITED STATES
IN WHICH MOTION PICTURES WERE EXHIB-
ITED.

(Separated as to Licensees and Non-licensees of the Motion
Picture Patents Company.)

	State	Licensees	Non- Licensees	Total	Differences
2	Maine	56	30	86	26—
	New Hampshire	38	22	60	16—
	Vermont	37	20	57	17—
	Massachusetts	217	119	336	98—
	Rhode Island	27	18 (18)	45	9—
	Connecticut	79	54	133	25—
	New York	783	445	1228	338—
	New Jersey	201	149	350	52—
	Pennsylvania	641	528	1169	113—
	Delaware	9	13	22	4
3	Dist. of Col.	40	23	63	17—
	Maryland	74	97	171	23
	Virginia	54	41	95	13—
	West Virginia	69	66	135	3—
	Ohio	461	420	881	41—
	Indiana	235	251	486	16
	Illinois	521	442	963	79—
	Kentucky	76	67	143	9—
	Michigan	185	213	398	28
	Minnesota	127	96	223	31—
	Wisconsin	114	165	279	51
4	North Dakota	24	21	45	3—
	South Dakota	29	32	61	3
	Iowa	167	202	369	35
	Nebraska	95	95	190	
	Missouri	237	200	437	37—
	Kansas	124	141	265	17
	North Carolina	38	38	76	
	South Carolina	17	17	34	
	Tennessee	46	35	81	11—
	Georgia	52	32	84	20—

1

State	Licensees	Non-Licensees	Total	Differences
Florida	40	43	83	3
Alabama	34	28	62	6—
Mississippi	28	32	60	4
Louisiana	61	63	124	2
Oklahoma	67	129	196	62
Arkansas	40	50	90	10
Texas	130	167	297	37
New Mexico	16	17	33	1
Colorado	77	75	152	2—
Wyoming	25	12	37	13—
Montana	43	34	77	9—
Arizona	23	19	42	4—
Utah	51	41	92	10—
Nevada	18	8	26	10—
Idaho	45	39	84	6—
California	382	187	569	195—
Oregon	139	68	207	71—
Washington	144	101	245	43—
Total	6236	5205	11441	1031—

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Defendants' Exhibit No. 158.

STATEMENT AS OF JULY 7, 1912, SHOWING
NUMBER OF PLACES IN THE UNITED STATES
IN WHICH MOTION PICTURES WERE EXHIB-
ITED.

(Separated as to Licensees and Non-licensees of the Motion
Picture Patents Company.)

	State	Licensees	Non- Licensees	Total	Differences
2	Maine	84	54	138	30—
	New Hampshire	39	27	66	12—
	Vermont	44	21	65	23—
	Massachusetts	179	138	317	41—
	Rhode Island	24	16	40	8—
	Connecticut	67	80	147	13
	New York	849	643	1492	206—
	New Jersey	226	227	453	1
	Pennsylvania	606	573	1179	33—
	Delaware	10	11	21	1
3	Dist. of Col.	43	34	77	9—
	Maryland	61	107	168	46
	Virginia	59	63	122	4
	West Virginia	83	87	170	4
	Ohio	453	460	913	7
	Indiana	238	279	517	41
	Illinois	528	533	1061	5
	Kentucky	85	81	166	4—
	Michigan	200	243	443	43
	Minnesota	117	123	240	6
	Wisconsin	123	174	297	51
4	North Dakota	21	24	45	3
	South Dakota	40	43	83	3
	Iowa	179	222	401	43
	Nebraska	109	119	228	10
	Missouri	269	253	522	16—
	Kansas	136	177	313	41
	North Carolina	47	52	99	5
	South Carolina	30	21	51	9—
	Tennessee	63	47	110	16—
	Georgia	53	59	112	6

State	Non-		Total	Differences	
	Licenses	Licenses			
Florida	51	46	97	5—	1
Alabama	47	32	79	15—	
Mississippi	45	35	80	10—	
Louisiana	81	73	154	8—	
Oklahoma	88	141	229	53	
Arkansas	46	67	113	21	
Texas	193	220	413	27	
New Mexico	20	16	36	4—	
Colorado	74	79	153	5	2
Wyoming	19	12	31	7—	
Montana	39	42	81	3	
Arizona	24	19	43	5—	
Utah	51	39	90	12—	
Nevada	17	11	28	6—	
Idaho	55	32	87	23—	
California	395	239	634	156—	
Oregon	119	91	210	28—	
Washington	142	113	255	29—	
Total	6571	6298	12869	273—	3

By Mr. KINGSLEY :

Q. On the occasion of your first examination, February 24th, 1914, you furnished a statement as of July 21st, 1913, showing the number of places in cities of a hundred thousand population and over in which motion pictures were exhibited, and which is in evidence marked "Defendants' Exhibit No. 145." Did you also prepare, in the course of your duties, statements covering cities of the same size in the United States, relating respectively to the checkings of October 31st, 1910; January 30th, 1911; July 3, 1911; December 18th, 1911, and July 7th, 1912? A. Yes, sir.

Q. Are the five tabular statements which I show you, the statements prepared under your supervision and direction, and to which you referred in your preceding answer? A. Yes, sir.

The five papers offered in evidence by counsel for

- 1 the defendants are marked by the Examiner respectively: "Defendants' Exhibit No. 159," "Defendants' Exhibit No. 160," "Defendants' Exhibit No. 161," "Defendants' Exhibit No. 162," and "Defendants' Exhibit No. 163," and are respectively as follows:

Defendants' Exhibit No. 159.

STATEMENT AS OF OCTOBER 31, 1910, SHOWING
NUMBER OF PLACES IN CITIES OF 100,000 AND
OVER IN WHICH MOTION PICTURES WERE EX-
HIBITED.

(Separated as to Licensees and Non-Licensees of the Motion
Picture Patents Company.)

	City	Licensees	Non- Licensees	Total	Differences
	Boston, Mass.	26	11	37	15—
	Bridgeport, Conn.	9	2	11	7—
	Fall River, Mass.	3	2	5	1—
	New Haven, Conn.	5	5	10	
3	Providence, R. I.	5	1	6	4—
	Worcester, Mass.	3	2	5	1—
	Albany, N. Y.	12	1	13	11—
	Allegheny, Pa.				
	Buffalo, N. Y.	40	22	62	18—
	Jersey City, N. J.	11	17	28	6
	Newark, N. J.	23	21	44	2—
	New York, N. Y., Inc. Brooklyn	255	168	423	87—
	Paterson, N. J.	5	4	9	1—
	Philadelphia, Pa.	118	63	181	55—
4	Pittsburg, Pa.	59	65	124	6
	Rochester, N. Y.	14	3	17	11—
	Seranton, Pa.	9	2	11	7—
	Syracuse, N. Y.	8	2	10	6—
	Baltimore, Md.	43	34	77	9—
	Washington, D. C.	42	30	72	12—
	Chicago, Ill.	181	160	341	21—
	Cincinnati, Ohio	53	26	79	27—
	Cleveland, Ohio	84	33	117	51—
	Columbus, Ohio	13	9	22	4—

City	Non-		Total	Differences	
	Licensees	Licensees			
Dayton, Ohio	12	2	14	10—	1
Indianapolis, Ind.	30	15	45	15—	
Louisville, Ky.	12	5	17	7—	
Toledo, Ohio	21	6	27	15—	
Detroit, Mich.	33	21	54	12—	
Gd. Rapids, Mich.	5	4	9	1—	
Milwaukee, Wis.	1	24	25	23	
Minneapolis, Minn.	17	3	20	14—	
St. Paul, Minn.	7		7	7—	2
Kansas City, Mo.	27	28	55	1	
Omaha, Nebr.	12	11	23	1—	
St. Joseph, Mo.	6	2	8	4—	
St. Louis, Mo.	86	116	202	30	
Atlanta, Ga.	4	2	6	2—	
Memphis, Tenn.	5	1	6	4—	
New Orleans, La.	20	28	48	8	
Denver, Colo.	18	12	30	6—	
Los Angeles, Cal.	39	18	57	21—	
San Francisco, Cal.	54	31	85	23—	
Total	1,430	1,012	2,442	—418	3

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Defendants' Exhibit No. 160.

**STATEMENT AS OF JANUARY 30, 1911, SHOWING
NUMBER OF PLACES IN CITIES OF 100,000 AND
OVER IN WHICH MOTION PICTURES WERE EX-
HIBITED.**

(Separated as to Licensees and Non-Licensees of the Motion
Picture Patents Company.)

	City	Licensees	Non- Licensees	Total	Differences
2	Boston, Mass.	24	10	34	14—
	Bridgeport, Conn.	10	7	17	3—
	Fall River, Mass.	5	1	6	4—
	New Haven, Conn.	4	5	9	1
	Providence, R. I.	6	5	11	1—
	Worcester, Mass.	4	2	6	2—
	Albany, N. Y.	12	2	14	10—
	Allegheny, Pa.		3	3	3
	Buffalo, N. Y.	40	24	64	16—
	Jersey City, N. J.	11	13	24	2
3	Newark, N. J.	26	20	46	6—
	New York, N. Y.				
	Inc. Brooklyn	285	200	485	85—
	Paterson, N. J.	5	5	10	
	Philadelphia, Pa.	103	76	179	27—
	Pittsburg, Pa.	51	32	83	19—
	Rochester, N. Y.	14	3	17	11—
	Scranton, Pa.	7	9	16	2
	Syracuse, N. Y.	9	5	14	4—
	Baltimore, Md.	41	48	89	7
	Washington, D. C.	36	29	65	7—
4	Chicago, Ill.	179	158	337	21—
	Cincinnati, O.	51	14	65	37—
	Cleveland, Ohio	82	34	116	48—
	Columbus, Ohio	22	12	34	10—
	Dayton, Ohio	11	13	24	2
	Indianapolis, Ind.	30	12	42	18—
	Louisville, Ky.	9	10	19	1
	Toledo, Ohio	24	13	37	11—
	Detroit, Mich.	32	20	52	12—
	Gd. Rapids, Mich.	6	4	10	2—

City	Licensees	Non-	Total	Differences	
		Licensees			
Milwaukee, Wis.	10	19	29	9	1
Minneapolis, Minn.	18	6	24	12—	
St. Paul, Minn.	8	6	14	2—	
Kansas City, Mo.	34	32	66	2—	
Omaha, Nebr.	12	8	20	4—	
St. Joseph, Mo.	5	5	10		
St. Louis, Mo.	85	66	151	19—	
Atlanta, Ga.	5	6	11	1	
Memphis, Tenn.	9	4	13	5—	
New Orleans, La.	26	26	52		
Denver, Colo.	20	14	34	6—	2
Los Angeles, Cal.	46	18	64	28—	
San Francisco, Cal.	60	18	78	42—	
Total	1,477	1,017	2,494	460—	

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Defendants' Exhibit No. 161.

STATEMENT AS OF JULY 3, 1911, SHOWING NUMBER OF PLACES IN CITIES OF 100,000 AND OVER IN WHICH MOTION PICTURES WERE EXHIBITED.

(Separated as to Licensees and Non-Licensees of the Motion Picture Patents Company.)

	City	Licensees	Non-Licensees	Total	Differences
2	Boston, Mass.	20	10	30	10—
	Bridgeport, Conn.	11	9	20	2—
	Fall River, Mass.	4	1	5	3—
	New Haven, Conn.	4	8	12	4
	Providence, R. I.	3	4	7	1
	Worcester, Mass.	4	2	6	2—
	Albany, N. Y.	10	4	14	6—
	Allegheny, Pa.	0	2	2	2
	Buffalo, N. Y.	36	22	58	14—
	Jersey City, N. J.	15	25	40	10
3	Newark, N. J.	38	28	66	10—
	New York, N. Y., inc. Brooklyn	298	240	538	58—
	Paterson, N. J.	5	5	10	0
	Philadelphia, Pa.	78	81	159	3
	Pittsburg, Pa.	60	35	95	25—
	Rochester, N. Y.	11	6	17	5—
	Scranton, Pa.	8	9	17	1
	Syracuse, N. Y.	8	10	18	2
	Baltimore, Md.	32	53	85	21
	Washington, D. C.	36	37	73	1
4	Chicago, Ill.	165	175	340	10
	Cincinnati, Ohio	36	31	67	5—
	Cleveland, Ohio	56	52	108	4—
	Columbus, Ohio	30	10	40	20—
	Dayton, Ohio	18	23	41	5
	Indianapolis, Ind.	31	21	52	10—
	Louisville, Ky.	10	11	21	1
	Toledo, Ohio	15	25	40	10
	Detroit, Mich.	31	21	52	10—
	Grand Rapids, Mich.	5	3	8	2—

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City	Licenses	Non- Licenses	Total	Differences
Milwaukee, Wis.	11	18	29	7
Minneapolis, Minn.	22	7	29	15—
St. Paul, Minn.	5	14	19	9
Kansas City, Mo.	24	42	66	18
Omaha, Nebr.	12	8	20	4—
St. Joseph, Mo.	4	0	4	4—
St. Louis, Mo.	91	50	141	41—
Atlanta, Ga.	8	6	14	2—
Memphis, Tenn.	9	5	14	4—
New Orleans, La.	23	19	42	4—
Denver, Colo.	13	17	30	4
Los Angeles, Cal.	49	23	72	26—
San Francisco, Cal.	64	20	84	44—
Total	1,413	1,192	2,605	221—

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Defendants' Exhibit No. 162.

STATEMENT AS OF DECEMBER 18, 1911, SHOWING
NUMBER OF PLACES IN CITIES OF 100,000 AND
OVER IN WHICH MOTION PICTURES WERE EX-
HIBITED.

(Separated as to Licensees and Non-Licensees of the Motion
Picture Patents Company.)

	City	Licensees	Non- Licensees	Total	Differences
2	Boston, Mass.	40	10	50	30—
	Bridgeport, Conn.	11	11	22	
	Fall River, Mass.	5	3	8	2—
	New Haven, Conn.	6	4	10	2—
	Providence, R. I.	6	4	10	2—
	Worcester, Mass.	4	2	6	2—
	Albany, N. Y.	12	1	13	11—
	Allegheny, Pa.		2	2	2
	Buffalo, N. Y.	44	17	61	27—
	Jersey City, N. J.	13	10	23	3—
3	Newark, N. J.	38	17	55	21—
	New York, N. Y., inc. Brooklyn	353	167	520	186—
	Paterson, N. J.	7	2	9	5—
	Philadelphia, Pa.	102	85	187	17—
	Pittsburg, Pa.	64	37	101	27—
	Rochester, N. Y.	13	6	19	7—
	Scranton, Pa.	10	8	18	2—
	Syracuse, N. Y.	11	9	20	2—
	Baltimore, Md.	46	61	107	15
	Washington, D. C.	40	23	63	17—
4	Chicago, Ill.	229	160	389	69—
	Cincinnati, Ohio	40	22	62	18—
	Cleveland, Ohio	68	44	112	24—
	Columbus, Ohio	25	21	46	4—
	Dayton, Ohio	17	18	35	1
	Indianapolis, Ind.	32	22	54	10—
	Louisville, Ky.	15	13	28	2—
	Toledo, Ohio	22	24	46	2
	Detroit, Mich.	38	33	71	5—
	Grand Rapids, Mich.	6	4	10	2—

City	Licensees	Non-Licensees	Total	Differences
Milwaukee, Wis.	24	30	54	6
Minneapolis, Minn.	29	16	45	13—
St. Paul, Minn.	9	11	20	2
Kansas City, Mo.	32	29	61	3—
Omaha, Nebr.	14	9	23	5—
St. Joseph, Mo.	7	3	10	4—
St. Louis, Mo.	77	42	119	35—
Atlanta, Ga.	14	4	18	10—
Memphis, Tenn.	10	9	19	1—
New Orleans, La.	29	18	47	11—
Denver, Colo.	19	16	35	3—
Los Angeles, Cal.	51	22	73	29—
San Francisco, Cal.	68	20	88	48—
	1,700	1,069	2,769	631—

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Defendants' Exhibit No. 163.

STATEMENT AS OF JULY 7, 1912, SHOWING NUMBER OF PLACES IN CITIES OF 100,000 AND OVER IN WHICH MOTION PICTURES WERE EXHIBITED.

(Separated as to Licensees and Non-Licensees of the Motion Picture Patents Company.)

	City	Licensees	Non-Licensees	Total	Differences
2	Boston, Mass.	26	10	36	16—
	Bridgeport, Conn.	8	15	23	7
	Fall River, Mass.	3	6	9	3
	New Haven, Conn.	10	11	21	1
	Providence, R. I.	5	1	6	4—
	Worcester, Mass.	4		4	4—
	Albany, N. Y.	14	5	19	9—
	Allegheny, Pa.		2	2	2
	Buffalo, N. Y.	44	19	63	25—
	Jersey City, N. J.,	14	16	30	2
3	Newark, N. J.	33	45	78	12
	New York, N. Y., inc. Brooklyn	359	243	602	116—
	Paterson, N. J.	6	4	10	2—
	Philadelphia, Pa.	87	79	166	8—
	Pittsburg, Pa.	71	35	106	36—
	Rochester, N. Y.	11	13	24	2
	Scranton, Pa.	10	1	11	9—
	Syracuse, N. Y.	12	15	27	3
	Baltimore, Md.	35	64	99	29
	Washington, D. C.	43	32	75	11—
4	Chicago, Ill.	224	192	416	32—
	Cincinnati, Ohio	38	23	61	15—
	Cleveland, Ohio	63	57	120	6—
	Columbus, Ohio	32	25	57	7—
	Dayton, Ohio	20	26	46	6
	Indianapolis, Ind.	34	29	63	5—
	Louisville, Ky.	12	13	25	1
	Toledo, Ohio	18	30	48	12
	Detroit, Mich.	43	43	86	
	Gd. Rapids, Mich.	5	5	10	

City	Licenses	Non-Licenses	Total	Differences	
Milwaukee, Wis.	25	26	51	1	1
Minneapolis, Minn.	24	23	47	1—	
St. Paul, Minn.	4	10	14	6	
Kansas City, Mo.	47	31	78	16—	
Omaha, Nebr.	15	12	27	3—	
St. Joseph, Mo.	5	5	10		
St. Louis, Mo.	74	50	124	24—	
Atlanta, Ga.	8	10	18	2	
Memphis, Tenn.	13	7	20	6—	2
New Orleans, La.	33	27	60	6—	
Denver, Colo.	17	16	33	1—	
Los Angeles, Cal.	43	33	76	10—	
San Francisco, Cal.	56	27	83	29—	
Total.	1,648	1,336	2,984	312—	

Thereupon SIEGMUND LUBIN, the next witness produced by the defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows: 3

Direct examination by Mr. KINGSLEY:

Q. Where do you live, Mr. Lubin? A. I live in Philadelphia.

Q. What is your business? A. Motion picture plays, films.

Q. Do you produce motion pictures? A. Yes, sir.

Q. With what firm or corporation are you connected? A. Lubin Manufacturing Company.

Q. Are you an officer of the Lubin Manufacturing Company? A. Yes, I am President of that institution. 4

Q. How long have you been the President of the Lubin Manufacturing Company? A. Oh, I don't know the years exactly, or the date.

Q. Several years? A. Yes, sir.

Q. Is the Lubin Manufacturing Company a licensee of the Motion Picture Patents Company? A. Yes.

Q. Do you remember when your company became a licensee of the Motion Picture Patents Company? A. It

1 took the first license out from Edison, I don't know the year, neither, but I can look when it was started. I took out a license from Edison in 1908.

Q. And did you, after that, take out a license with the Patents Company? A. Yes, sir, in December, 1908, a little later on, a couple of months later.

Q. Did you have any litigation or lawsuits with respect to film, camera or projecting machine patents before you became a licensee of the Edison Company? A. Yes.

Q. Did you have one lawsuit or several lawsuits? A. Several—in 1896—I made films; in '95 I made projecting machines.

Q. Did you succeed in making this machine? A. Yes, sir.

Q. Was there a time that you went out of business in this country? A. Yes.

Q. What year was that, if you recall? A. Well, I don't know the year, is one trouble; I have not kept that. A couple of years after I manufactured I went away to Europe and took all my firm's machinery along, as Edison at that time had won a suit against the Biograph, and my lawyer advised I had better quit the country here. My case was similar to or like the Biograph.

Mr. GROSVENOR: When was this, in 1901?

The Witness: No. 1901? I can't tell you the date. I must look that up.

Mr. GROSVENOR: I object to all this testimony as being indefinite and misleading, giving the wrong impression as to the litigation, said litigation having occurred many years prior to the formation of this combination, and having no bearing upon any of the issues in this case.

By Mr. KINGSLEY:

Q. What was the reason for your ceasing to do business in this country? A. Well, I had trouble with the patentee, with Mr. Edison. I had also a lawsuit with the Biograph. I had also a lawsuit with a man in Washington.

I forget his name, a man which sold the patent right to the Biograph. I have forgotten his name. 1

Q. How long did you remain in Europe? A. I remained in Europe a year, about a year.

Q. Do you recall about what time you came back from Europe? A. I came back after the Biograph won the case against Edison, and a decision was given in its favor at that time.

Q. What was that date?

Mr. GROSVENOR: That was either in 1902 or 1903. You refer to Judge Wallace's decision? 2

The Witness: Yes, sir.

Mr. GROSVENOR: Then I object to that.

Mr. KINGSLEY: I object to any cross examination of this witness just now, and move to strike it out as misleading. It is not the proper time for cross examination.

Mr. GROSVENOR: I object to this testimony, as to the witness going to Europe and coming back, the same having been six or seven years— 3

The Witness: I took my whole factory over there.

Mr. GROSVENOR: —prior to the formation of the combination alleged to be unlawful.

By Mr. KINGSLEY:

Q. You say you took your whole factory to Europe and stayed there for about a year? A. Yes, sir.

Q. And you came back, would you say, about what year? When did you come back? Have you any idea? A. I can't give the dates. 4

Q. After coming back how long was it before you took an Edison license? A. I came back to make arrangements with the Biograph people. I took a license out from Edison, this I know, 1908; well, at the same time they all took out licenses.

Q. Now, Mr. Lubin, what I want to know is this: How long had you been back in this country when you took

1 out this Edison license in 1908, several months, or a year? How long had you been back here? A. Nearly a year, or a year or two, a year, over a year; I don't remember that time when I got back.

Q. Did you consider it necessary to have a license? A. Positively.

Q. Were any lawsuits pending against your company when it became a licensee of the Motion Picture Patents Company? A. No, all lawsuits ceased, and I was able to manufacture.

2 Q. Were there any lawsuits against you at the time you took out a license which then ceased? A. When I took the license out all the lawsuits ceased. I had no more lawsuits.

Q. After you took out an Edison license? A. Yes, sir.

Q. Before you took out a Patents Company license were you threatened with any lawsuits? A. Quite many. It kept me broke.

Q. Did you feel that if you didn't take out a license you would have to go out of the business again? A. I felt that way, would have to go out of business.

3 Q. Did you consult your lawyer as to the desirability of taking a license from the Motion Picture Patents Company? A. I did.

Q. Was it after consulting with your lawyer that your company signed the license agreement? A. Yes, sir.

Q. Do you remember when you signed the license agreement with the Motion Picture Patents Company on December 8th, 1908, that there was a meeting at which the other licensees were present at the office of the Motion Picture Patents Company? A. I don't know the date; I can't swear to any date.

4 Q. I don't care so much about the date, but do you remember that meeting? A. I most all the time was at all meeting. Maybe I missed one or two, I can't tell you.

Q. Do you remember when you signed the Patents Company license? A. Yes, sir.

Q. Was there a meeting on that day when you signed the Patents Company license? A. Very likely.

Q. Do you know a man named James J. Lodge? A. James J. Lodge—I don't remember his name, but I must have seen him.

Q. On the day that you took out a license with the Mo-

tion Picture Patents Company did you have any talk with James J. Lodge in which you said the manufacturers were going to have a rental exchange? A. That I said it? 1

Q. Yes. A. Not to my knowledge.

Q. Did you hear anybody else say anything of that sort that day? A. Never, never make any such remark.

Q. Did you hear anybody else talk with Lodge on that day? A. Not to my knowledge.

Q. Do you remember when the General Film Company was formed? A. Yes, sir.

Q. Who first suggested the idea to you? A. The Edison Company. Edison, somebody from the Edison made the proposition that they would have to pay so much per foot, or pay every year for royalties so high, fifty or sixty thousand dollars. 2

Q. You are thinking of the Patents Company, are you not? A. Yes, sir; I paid to Edison too, before that thing started.

Q. Now, I am asking you about the General Film Company. Do you remember when that was formed? A. When it was formed?

Q. Yes. A. I don't remember the date. I must look it up. I suppose you gentlemen have got it here. 3

Q. Who first talked to you about the forming of the General Film Company? A. Well, business was in such bad condition. The people didn't pay their bills, and it was impossible to keep the performances from conflicting, the programs would conflict with others. Sometimes on the same street they all had the same performance, the same films, and the people could not make it out; the theatre business couldn't make it pay, and the renter could not make it pay, and they all broke, or the majority of them did. One or two, maybe, was getting along, but the balance was not able to pay their bills, and you cannot manufacture without getting the money. 4

Q. Your concern had some trouble in collecting its bills, did it not? A. Oh, just a whole lot. We had a whole lot of losses, thousands.

Q. Did your company own a rental exchange at the time the General Film Company was formed? A. We did.

Q. Did you have more than one rental exchange? A.

1 Yes, I had two, one in Philadelphia, and one in Norfolk. Norfolk didn't pay, and I closed it up.

Q. What became of your rental exchange in Philadelphia? A. I sold it to the General Film Company.

Q. Did you have anything to do with the General Film Company buying the property of some other exchanges after it was formed? A. Nothing whatever.

Q. Had your Philadelphia exchange made any money? A. No.

2 Q. Were you interested in the theatrical business at the time you sold your Philadelphia exchange? A. I think I had some theatres.

Q. Do you know Lewis Swaab, of Philadelphia? A. Yes, sir.

Q. Did you ever have any talk with him in which you stated to him that you and he would control the exchange business of Philadelphia?

Mr. GROSVENOR: Objected to, as leading.

3 The Witness: I never did. He didn't talk to me for years after he was in my employ, and since he left me I don't think I have seen him twice.

Q. When did he leave you? A. He left me and started himself a rental business.

Q. When he started a rental business of his own, were you then on friendly terms with him? A. For a long time I didn't talk with him, at all.

Q. So you had not spoken to Swaab for several years? A. Yes, sir, but maybe after a while I talked to him, but never made any such remark that I would control it.

4 Q. Did you send for him to come to see you and talk about selling out his exchange? A. I never did.

Whereupon, at 12:10 o'clock P. M., March 11th, 1914, the hearing was adjourned until 10:30 o'clock, A. M., March 12th, 1913, to be resumed at Room 159, Hotel Manhattan, New York City.



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